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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946.

No. 62.

CHARLES B. MORRIS,
Appellant,

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois.

Appeal from the Supreme Court of the State of Illinois.

BRIEF OF APPELLANT.

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Appeal from the Supreme Court of the State of Illinois.

BRIEF OF APPELLANT.

Opinion Below.

The opinion of the Supreme Court of Illinois is reported: The People ex rel. Paul F. Jones, Director of Insurance, v. Chicago Lloyds et al., 391 Ill. 492, 63 N. E. (2d) 479.

The Date of the Judgment to Be Reviewed Is September 19th, 1945 (Motion for Rehearing Denied November 19, 1945).

This Appeal was allowed February 14, 1946 (T. 116).

JURISDICTION.

There have been filed herein a printed "Statement as to Jurisdiction" and a brief by appellant on the question of jurisdiction and on appellee's Motion to Dismiss the appeal. Therefore it is necessary only to mention briefly herein the facts and the law which give this Court jurisdiction.

Section 344 (USCA), Title 28 (Judicial Code, 237 Amended), sustains the jurisdiction of this Court. This section provides:

> "A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had * * * where there is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the constitution, treaties, or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

Cases Sustaining Jurisdiction.

The following cases sustain the jurisdiction of this Court:

Meyer v. Fleming et al., Trustees, decided 2/4/46, 326 U. S. 707, 66 SC 382, 90 L. Ed., p. 422;
Charleston etc. Ass'n v. Alderson, 324 U. S. 182, 89 L. Ed. 857;
Memphis etc. Gas Co. v. Beeler, 315 U. S. 649, 86 L. Ed. 1090, 62 SC 857;
John P. King Mfg. Co. v. City Council of Augusta, 277 U. S. 267, 89 L. Ed. 861, 65 S. Ct. 627;
Standard Scale Co. v. Farrell, 249 U. S. 571, 63 L. Ed. 780, 39 SC 380;
Williams v. Bruffy, 96 U. S. 716, 24 L. Ed. 743;
Zucht v. King, 260 U S. 174, 67 L. Ed. 194, 43 SC 24;

Reinman v. City of Little Rock, 237 U. S. 171, 59 L. Ed. 900, 35 SC 511;
Atlantic Coast Line etc. v. City of Goldsboro, 232 U. S. 548, 58 L. Ed. 721, 34 SC 364;
Bacon v. Texas, 163 U. S. 207, 41 L. Ed. 132, 16 SC 1023;
Knights of Pythias v. Meyer, 265 U. S. 30, 32, 34, 68 L. Ed. 885.

There is drawn in question the validity of Sections 187, 188, 189, 190, 191, 193, 194, 196 and 208 of the Illinois Insurance Code (Ill. Rev. Stat., Ch. 73, Pars. 799-806, 808, 820). (Set out in Appendix.)

The Supreme Court of Illinois, the court of last resort in said State, has decided in favor of the validity and legal applicability and effect to be given to said sections. Appellant has contended at all times and at all stages in the proceedings in the courts of Illinois, when the question arose, and now contends in this Court, that said sections of the Illinois Insurance Code, according to the meaning and effect given them by the decision of the Supreme Court of Illinois in this case, are repugnant to the Constitution of the United States in the following respects:

First: Said sections, according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as if in the text) are repugnant to Section 1 of Art. IV, because by that meaning they authorize the refusal to give full faith and credit to sister-states' money judgments based upon a civil cause of action.

Second: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Section 2 of Art. IV, because by that meaning they prevent appellant from resorting to the

courts of Illinois and so deprive him, a citizen of the State of Missouri, of the privileges and immunities of citizens in the several states.

Third: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Section 1 of Amendment XIV providing, in part, that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; because, by that meaning, they prevent appellant from resorting to the courts of Illinois; they prevent appellant from resorting to the courts of Missouri (inasmuch as Illinois refuses to recognize the judgments of Missouri); they deprive appellant of his right as a citizen of the United States to have full faith and credit given to the judgment he recovered in Missouri.

Fourth: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Section 1 of Amendment XIV providing in part: "Nor shall any State deprive any person of * * * property, without due process of law", because, by that meaning, they deprive appellant of property—his Missouri judgment—without due process of law.

Fifth: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Section 1 of Amendment XIV providing in part: "Nor shall any State deny to any person within its jurisdiction the equal protection of the laws", because, by that meaning, they deny to a Missouri judgment creditor the right to share in the debtor's property ratably in proportion to his claim, with other unsecured creditors. They discriminate against the appellant upon

the ground merely that he has had his claim adjudicated on its merits in Missouri, rather than before the court of the liquidator in Illinois.

Sixth: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Art. VI, which provides in part: "The Constitution * * * shall be the supreme Law of the Land," because by that meaning, they subordinate the federal Constitution to a State Law.

Appellant had a valid, final and unsatisfied Missouri judgment against Chicago Lloyds, based upon a tort committed in Missouri in October, 1932, for which on August 24, 1934, he had filed suit for damages against Chicago Lloyds, in the Circuit Court of the City of St. Louis, Missouri. This suit was at issue and pending for trial in Missouri, on February 9th, 1938, when liquidation proceedings were instituted in the Superior Court of Cook County, Illinois, by the Director of Insurance of the State of Illinois, against Chicago Lloyds, under the provisions of the said Illinois Insurance Code (T. 1).

The Missouri court had jurisdiction of the subject-matter and of the parties, the defendants having been personally served and having answered to the merits. While this suit was pending, appellant received notice from the Director of Insurance (as Liquidator) to file his claim before him on or before November 15, 1938, the date set by the Superior Court as the last day for filing claims against Chicago Lloyds; and in response to that notice, Appellant, on September 21, 1938, filed a claim for $100,000 and appended thereto a copy of his petition in the said damage suit then pending in the Missouri Court, together with a statement that when said cause of action was reduced to judgment he would file an amended and supplemental claim (T. 16).

On April 7, 1941, judgment was rendered in the sum of $50,000 in the said Missouri proceeding in favor of Appellant and against Chicago Lloyds; and on August 2nd, 1941, Appellant filed an amended and supplemental claim with said Liquidator (Claimant's Ex. 2, T. 17), together with an exemplified transcript of the judgment and record of proceedings before said Circuit Court of the City of St. Louis, Missouri (T. 29).

On June 10th, 1942, the Director filed his Tenth Report in said Superior Court of Cook County and recommended the disallowance of Appellant's claim (T. 7) on the ground that the Missouri judgment was rendered subsequent to the entry of the Order directing liquidation, and was obtained subsequent to November 15th, 1938, and that said Missouri judgment was obtained in violation of an injunctive order entered by the Superior Court of Cook County on February 9th, 1938. (Sec. 189 is the Injunction Statute of the Illinois Insurance Code; the statute under which the injunctive order, therein relied on by the Director, was issued.)

Appellant thereafter filed lengthy objections and exceptions to the report and recommendation of the Liquidator, which were referred to a Master in Chancery (T. 12).

The Master filed a report recommending that the claim be disallowed on the ground and for the reason that the Missouri judgment was entered in violation of the injunctive order issued in the liquidation proceedings (T. 15), and that the judgment obtained in Missouri was not conclusive against the liquidator or upon the courts of Illinois (T. 19), and that it would be necessary for the appellant to try his case de novo on the merits before the Master (T. 17). To this report exceptions were filed, raising the same constitutional questions and objections that were subsequently raised in the Supreme Court of Illinois and which are now contended for in this Court (T. 24-29, incl.).

The Master overruled these exceptions (T. 28). The Superior Court of Cook County, Illinois, confirmed the report of the Master (T. 44), the court holding that the Missouri judgment had no force or binding effect upon the Liquidator and should not be considered in the liquidation proceedings as evidence of the liability or amount of damages of claimant against the assets of Chicago Lloyds in the liquidation proceedings (T. 44).

The Appellant duly appealed to the Supreme Court of Illinois from said adverse judgment, because of the fact that a federal constitutional question was involved. The entire record and a brief in support of the Assignments of Error was filed, the rules of the Supreme Court of Illinois requiring that said Assignments of Error shall be made in the brief of appellant. Appellee filed an answering brief, wherein he relied not only on the provisions of said Section 189, but for the first time invoked the provisions of Sections 187, 188, 190, 191, 193, 194, 196 and 208 of the Illinois Insurance Code (Ill. Rev. Stat., Ch. 73, Pars. 799, 800, 802-806, 808, 820, the provisions of which statutes (including Sec. 189, Par. 801) are set out in an appendix filed at the end of this brief.

In his answering brief, Appellee contended that when said statutes were legally interpreted, construed, applied and given effect, they justified the Supreme Court of Illinois in affirming the judgment on the additional ground, that notwithstanding the respondent, Chicago Lloyds, was in fact a mere voluntary unincorporated association of individuals, transacting an insurance business in several other States of the Union, including the State of Missouri, besides the State of Illinois; and notwithstanding it was not in fact a corporation having a Charter from the State of Illinois and was not created and existing by virtue of the Laws of Illinois; and also notwithstanding no petition had been filed nor any order made pronouncing Chicago Lloyds legally dissolved, in conformity with Section

196 (Illinois Insurance Code), nevertheless the legal effect of vesting title to the assets and property of said Chicago Lloyds in said Statutory Liquidator, on February 9th, 1938, was to abate any and all actions pending against Chicago Lloyds in Sister-States and completely dissolve said unincorporated association of individuals as an entity; and said appellee further contended that the judgment rendered against said association, Chicago Lloyds, in the sister-state of Missouri, subsequent to February 9th, 1938, was therefore void and not entitled to the benefit of the full-faith-and-credit clause of the Constitution of the United States, and that such an effect, so given to said Sections 191, 193 and 196, would not constitute a violation of any of appellant's constitutional rights.

Appellant filed in said Supreme Court his Reply Brief (T. 103), met said new contentions and raised all the constitutional questions which are here raised in this Court (T. 67-71, incl.) and orally presented said contentions in vain.

The parties admit and the Court found that Chicago Lloyds is an unincorporated association of individuals (T. 73).

Section 196 of the said Illinois Insurance Code provides:

> "If the company against whom the petition for liquidation is filed be a corporation and a petition prays for dissolution of such company, the court shall have jurisdiction either before or after final liquidation of the property, business and affairs of such company after service of an order to show cause, as aforesaid, and a full hearing, to enter a decree dissolving such company."

No order of dissolution was requested or entered. However, both the Liquidator and the Illinois courts treated Chicago Lloyds as though it were a corporation. That such

was the holding of the Supreme Court of Illinois is shown by the following language of the opinion (T. 76-77):

> "But since insurance companies are excluded from the operation of the National Bankruptcy Act, and one of the objects of the Illinois act liquidating insolvent insurance companies is to secure ratable distribution of its assets, we see no reason why the statute vesting a liquidator with title, should not receive the same construction as the Bankruptcy Act, which on adjudication of the bankrupt places title to all of the bankrupt's property, with actual or constructive possession, in a trustee, without regard to his location or place of adjudication. • • •
>
> "In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois Statute for the liquidation of insolvent insurance companies. • • •
>
> "If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds."

The opinion further held (T. 85) that this case comes within the class where the holder of a foreign judgment, who is given no special rights against an insolvent corporation, may not, because of the judgment alone, impose a different method of distribution of its assets than the Court administering the insolvent estate (T. 85).

Furthermore, the Supreme Court of Illinois holds that

the Appellant was bound under the full-faith-and-credit clause to recognize the effect of the Illinois Decree (T. 84), and that "any rights against such property under the Missouri judgment would be inferior to, and subject to the Illinois judgment and decree."

The Illinois Supreme Court holds that the cases cited by appellant, to support his position, would be controlling only in the event of a surplus in the hands of the Liquidator after the payment of all other claims (T. 84).

STATEMENT OF CASE.

This case came to the Supreme Court of Illinois, the Court of last resort in said State, on a direct appeal to it from the Superior Court of Cook County, Illinois, for the reason that it presented questions under the full faith and credit clause of the federal Constitution. The Supreme Court of Illinois said (T. 72):

> "The controversy in this case arises out of the disallowance of a claim of Charles B. Morris, appellant, by the Director of Insurance of Illinois, the liquidator of Chicago Lloyds, hereinafter referred to as 'liquidator,' appointed by the decree of the Superior Court of Cook County upon the petition of the Director of Insurance and the Attorney General of the State of Illinois.
>
> "As finally amended appellant's claim consists of a judgment rendered in the circuit court of the city of St. Louis, Missouri, against Chicago Lloyds, three years after the liquidator of Chicago Lloyds had been confirmed by the decree of the Superior Court. The claimant contended the full-faith-and-credit clause of the constitution of the United States (art. IV, sec. 1) and the acts of Congress enacted pursuant thereto, required that such judgment be recognized in the Illinois liquidation proceeding and allowed as a claim against the assets of Chicago Lloyds for the full amount of such judgment * * *.

(T. 73):

> "The question here presented, as set out in the report of the master, is as follows: 'Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign

court after such appointment?' This presents a new application of the full-faith-and-credit clause, which is still debatable, or at least questionable, and therefore is subject to review by this court on direct appeal from the superior court of Cook county. * * * Incidentally the question is also in the case under such clause of the constitution as to what effect the prior decree of the Illinois court, appointing a liquidator for Chicago Lloyds, has upon a subsequent judgment rendered in another State seeking satisfaction from the same assets. These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbitrator of such questions arising under the full-faith-and-credit clause."

The facts are as follows (T. 29-31): Appellant, Charles B. Morris, is, and at all times herein stated was, a citizen of Missouri, and for more than twenty years prior to 1929 was engaged in the insurance business in that State, acting as agent for a large number of insurance companies and writing policies of insurance. In 1929 he was duly appointed sub-agent to write insurance in the State of Missouri for Chicago Lloyds, an unincorporated association composed of more than three hundred members, residing in various States of the Union. The members of Chicago Lloyds became associated for the purpose of conducting an insurance business not only in the State of Illinois but also in several of the states of the Union. Each member executed a power-of-attorney in accordance with the form set out in the record (T. 35). A license or certificate of authority to transact business in Illinois, under an approved Lloyds Plan, was issued to Chicago Lloyds by the State of Illinois, pursuant to the provisions of said Illinois Insurance Code, Secs. 699, 703, 704, 705, 706, 708, good for the term of one year and which required renewal from year to year. A statute of Illinois provides that such an association could sue or be sued under the name it had adopted (Sec. 717 and said Illi-

nois Ins. Code). Chicago Lloyds also applied for and was granted a license to transact business in Missouri (T. 38, Claimant's Ex. 5). Under the laws of that State it could also sue or be sued under the name it had adopted, the statutes providing that service of process upon an unincorporated association should be by personal service upon the agent and the attorney-in-fact, Associated Underwriters, Inc. (Secs. 728-729, R. S. Mo. 1929), or by serving the Superintendent of Insurance of the State of Missouri (Sec. 5894, R. S. Mo. 1929), and further providing that such service upon said Superintendent "shall be valid and binding, and be deemed personal service upon such company, so long as it shall have any policies or liabilities outstanding in this state, although such company may have withdrawn, been excluded from, or ceased to do business in this state."

In October, 1932, after appellant had acted as sub-agent for Chicago Lloyds for about three years, a dispute arose between them concerning an alleged indebtedness from appellant to Chicago Lloyds. Appellant was arrested on four separate occasions and confined in jail for a total of twelve days and nights, on a false and malicious charge of embezzlement made by Chicago Lloyds and its attorney-in-fact, Associated Underwriters, Inc., with the consequent effect of completely destroying his established insurance business and reputation, and causing him great financial loss, expense and humiliation. He was required to stand trial, and at the close of the evidence adduced against him, the jury was directed to acquit him (T. 32).

On August 24, 1934, while said Chicago Lloyds was still transacting business in Missouri, appellant filed a suit against Chicago Lloyds and its attorney-in-fact, Associated Underwriters, Inc., in the Circuit Court of the City of St. Louis, claiming damages in the amount of $100,000 for said false arrest and malicious prosecution. That

Court is a court of general jurisdiction. Personal service of process upon said defendants was obtained. The cause was removed to the Federal Court (T. 34), where pleas to the jurisdiction and answers to the merits were filed (T. 34). Thereafter the cause was remanded to the State Court where the cause was at issue and awaiting trial in said court, when on February 9, 1938, a petition was filed in the Superior Court of Cook County, on relation of the Director of Insurance of the State of Illinois, praying that Chicago Lloyds show cause why an order should not be entered finding that sufficient cause existed for the liquidation of Chicago Lloyds and directing the Director to take possession of its property, business and affairs and to liquidate the same in accordance with the provisions of the Illinois Insurance Code (T. 1). A consent by Chicago Lloyds to the entry of an order of liquidation and to the liquidation of Chicago Lloyds by the Director was filed (T. 3), and on the same day the Court entered an order or decree adjudging that sufficient cause existed for the liquidation of Chicago Lloyds and ordering that the Director take possession of the property and liquidate the same, in accordance with Article XIII of the Illinois Insurance Code (T. 3-4). The Superior Court of Cook County, Illinois, in and by its said decree sustaining the allegations of the petition filed February 9, 1938, stated (T. 4): "The court makes findings of fact, finding each of the facts alleged in the petition." Among the facts so alleged being the following (T. 2):

> "Respondent is insolvent. Its total admitted assets aggregate not to exceed $1,507,700.07 and its total liabilities aggregate in excess of $1,203,512.17, leaving a surplus to policy holders of only $304,187.90, whereas Section 99 of the Illinois Insurance Code, under which respondent has been operating since July 1, 1937, required it to keep and maintain in Illinois admitted assets, including the deposits of underwriters required

by Section 97 of said Code, exceeding all outstanding claims and other liabilities plus the earned premium (less reinsurance premiums and less the commissions actually paid on policies written prior to the effective date of said Code) on policies in force, of not less than $500,000.00" (T. 2).

At the time this order was entered, Chicago Lloyds was the only respondent. Thereafter, on June 24, 1938, a petition to join the members of Chicago Lloyds, the attorney-in-fact, the Trustee of securities, and unknown owners as parties respondent, was filed (T. 5) and an order joining them as respondents was entered (T. 6).

On February 15, 1938, an order requiring claims to be presented to the Director on or before November 15, 1938, was entered (T. 5). The director notified appellant by mail in St. Louis, Missouri, to present his verified proof of claim on or before November 15, 1938, stating that he had been directed to take possession of, and liquidate the property of Chicago Lloyds (T. 16, 20). On September 21, 1938, in response to said notice, appellant mailed his verified claim to the Director based upon the suit then pending in the Circuit Court of the City of St. Louis, Missouri (T. 16, 42, Liq. Ex. 2), and attached thereto a copy of the petition or complaint filed therein, stating that said suit was awaiting trial in the Circuit Court of the City of St. Louis, and that when judgment thereon was obtained, he would file a supplemental and amended claim (T. 16).

On March 17, 1941, said suit was set for trial in said Circuit Court of the City of St. Louis, and the parties, by their respective counsel, appeared. Thereupon, the attorney for Chicago Lloyds notified the Court that he was withdrawing on instructions from the Director. The trial proceeded. A jury was waived and the cause was submitted to the Court on the complaint of appellant, the

answers of Chicago Lloyds and Associated Underwriters, Inc., and on the evidence adduced. The Court took the case under advisement, and directed his clerk to write a letter to the Director (T. 16), notifying him that, on the day of the trial, counsel for Chicago Lloyds had withdrawn, and that the cause was under submission, and requesting his reaction thereto. The Director's attorney answered said letter on March 26th (T. 16), stating that the attorney for Chicago Lloyds had withdrawn on instructions, that Chicago Lloyds was being liquidated in the proceeding pending in the Superior Court of Cook County, Illinois, that it was the Director's position that the appellant was enjoined from obtaining or attempting to obtain preferences, judgments, attachments, or other like liens, until the further order of the Court (T. 43); and that liquidation proceedings in Illinois being an action in rem is analogous to a bankrupt proceeding, and that while the injunction order is good without notice and without service of process upon a violator of same, and does not prevent the Court from entering judgment, they believe that plaintiff, by asking the Court to proceed to judgment against Chicago Lloyds, is in direct violation of the injunction, and should he bring such judgment into Illinois and attempt to enforce it here, he will be violating the injunction order (Tr. 43, Liq. Ex. 3).

On April 17, 1945, said Circuit Court of the City of St. Louis entered a joint and several judgment in favor of the appellant and against Chicago Lloyds and Associated Underwriters for $50,000 and costs, and ordered that an execution issue thereon (T. 35, Claimant's Ex. 2).

On August 2, 1941, appellant filed with the Director his supplemental and amended claim for $50,000 based on said Missouri judgment and attached thereto a duly authenticated copy of said judgment and of said judgment roll (T. 17).

On June 10, 1942, the Director, without notice to the ap-

pellant and without any hearing upon said claim based upon the Missouri Judgment, filed a report on claim in said Superior Court of Cook County recommending the disallowance thereof (T. 7).

Appellant filed exceptions (T. 7-12) claiming therein that there had been no hearing before the Director upon the claim, and that the said recommendation of disallowance was entirely "ex parte"; that the claim and amended claim were properly filed; that the Director had given an improper and unlawful extra-territorial effect to the injunctive order, and failed to find, or state, or make known to the Court in his recommendation that claimant is and was a non-resident of Illinois, and a citizen of St. Louis, Missouri, and had instituted a suit against Chicago Lloyds in the year 1932, long prior to the entry of the decree directing liquidation, and that the said suit was pending and was being defended by Chicago Lloyds in the Circuit Court of St. Louis, Missouri, on February 9, 1938, when the order directing liquidation was entered; that the Director had failed to give the judgment of the Circuit Court of the City of St. Louis, State of Missouri, the full faith and credit to which it is entitled under the provisions of Article IV, Section 1 of the Constitution of the United States; that claimant had been denied as a citizen of the State of Missouri the privileges and immunities of citizens of the State of Illinois, as guaranteed by Article IV, Sec. 2, of the Constitution of the United States; that the Illinois Court had no right to enforce any law of the State of Illinois which abridged the privileges of the claimant as a citizen of Missouri and of the United States, or to deny to him as such citizen of Missouri the equal protection of the laws as guaranteed by Section 1 of the Fourteenth Amendment to the said Constitution; and that he was entitled to the benefit and protection of the Sixth Article of the Constitution of the United States, to the end that his claim may be adjudicated according to the provisions

of the Constitution of the United States and the laws of the United States made under and pursuant thereof (T.12).

Thereafter said Superior Court of Cook County referred the matter to a Master in Chancery to hear and consider said objections and exceptions (T. 12). The appellant offered in evidence before the Master the judgment and judgment roll of the Circuit Court of the City of St. Louis in favor of the claimant and against Chicago Lloyds for the sum of $50,000 (T. 29 et seq., Claimant's Ex. 2). He also offered in evidence a certified copy of the appointment of the Superintendent of Insurance of Missouri to receive service of process for Chicago Lloyds (Claimant's Ex. 3, T. 37); also the said letter from the Clerk of the St. Louis Circuit Court to the Director written at the request of the Judge who tried the case (T. 38, Claimant's Ex. 4) and other documentary evidence.

No evidence was offered by the Director which tended to show that the appellant was a party to said liquidation proceeding in which the order directing liquidation of Chicago Lloyds was entered on February 9, 1938; or that he was ever served with notice of said injunctive order (T. 24), or that he had ever been cited or found guilty of contempt of said order. The evidence offered by the Director was the notice to appellant to file his claim within the time fixed by the Court (T. 41, Liq. Ex. 1; T. 49-50), the original claim filed by appellant in response to said notice; the amended claim filed on August 2, 1941 (T. 17), and the said letter sent by the attorneys for the Director explaining the withdrawal of the Director's attorneys (T. 43, Liq. Ex. 3).

The Master found that, on February 9, 1938, the petition, praying for an order finding that sufficient cause existed for the liquidation of Chicago Lloyds, was filed (T. 15); that Chicago Lloyds consented to the entry of such an order and consented to the liquidation of Chicago Lloyds

by the Director of Insurance; that a decree was entered on February 9, 1938, directing the liquidation of Chicago Lloyds in accordance with the Illinois Insurance Code (T. 15); that this decree contained an injunctive order, a portion of which the Master incorporated into his report (T. 15), which order, among other things, "restrained all persons from in any manner interfering with the possession of said Director of Insurance in or to the books, records or property of Chicago Lloyds, or with the liquidation of its business, until the further order of the Court * * *; or from obtaining or attempting to obtain preferences, judgments, attachments or other like liens, and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in possession and control of the relator" (T. 15).

At no time has appellant ever asked for any preference, priority, lien, or any position of advantage. He asks only the right to share **pro rata** with the other general creditors in due course of administration.

There is no finding by the Master that appellant was ever served with a copy of the injunction, or that he had any notice thereof. It was stipulated that the appellant had received the notice to file a claim with the Director (T. 24). (This notice [T. 60-61] contains no reference to any injunctive order.) There was no stipulation that appellant had notice or knowledge of the injunction order. No evidence which could support a finding that appellant had notice or knowledge of the injunction was introduced. Counsel for the Director specifically reserved the right to produce evidence on that (T. 24), but produced none.

The facts, as summarized by the Master, from the evidence submitted, which was wholly documentary, and his conclusions of law are set out in the Transcript at pages 12 to 19.

The Master stated "that there is no dispute on any ma-

terial fact in the matter involved in this reference, and the only question involved is the question of law" (T. 18):

> "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the Court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment."

The Master recommended that "the recommendation of liquidator that the claim be disallowed should be sustained and that claimant's objections to said recommendation be overruled and denied, unless claimant desires to establish his claim by other evidence under the direction of this court in this proceeding" (T. 19). [Note: The Statute of Limitations (two years) would then have run against the original cause of action if it had to be presented de novo. Sec. 1016, R. S. Mo. 1939 (Sec. 864, R. S. Mo. 1929). Sec. 15, Chap. 83, R. S. Ill. 1937.]

Objections (which by order of said Superior Court stood as exceptions) were filed by appellant to the Master's Report (T. 24-28). Appellant excepted and objected to said report for the reason that the Master failed to give full faith and credit to said Missouri judgment, in violation of Section 1 of Article IV of the Constitution of the United States, and for the further reason that to refuse to accord full faith and credit to said judgment is to deny appellant his rights under Section 2 of Article IV of the United States Constitution, and is a violation of Section 1 of Amendment XIV to the United States Constitution (T. 28).

The case was thereupon argued before the Superior Court of Cook County upon said exceptions. On September 28, 1944, that court entered an order confirming the Master's Report, in which it found: "That the findings of the said Master in Chancery are proper, true and correct,

and that the objections to the Master's report filed by the claimant * * * were properly overruled by the Master." "That the judgment in favor of Charles B. Morris in Case No. 206,424 in the Circuit Court of the City of St. Louis, Missouri, has no force or binding effect upon Liquidator, and should not be considered in this liquidation proceedings." "That Morris has wholly failed and refused to proceed or to offer proof or evidence before the Court or the Master, other than the transcript of judgment entered in said case No. 206,424, and the other evidence introduced by claimant, as shown by the transcript of testimony filed with the Master's report, with respect to the liability or amount of damages of claimant against Chicago Lloyds" (T. 44).

The Court ordered, adjudged and decreed: "1. That the exceptions of claimant to said Master's report are overruled and said report in all respects approved and confirmed. * * * 3. That said claim of Charles B. Morris is denied and disallowed; that his objections to the Liquidator's Tenth Report on Claims and his recommendation that said claim be disallowed are overruled, and said report on claims and the recommendation of disallowance of said claim is approved and confirmed, and said claim disallowed in accordance with the recommendations contained in the Master's Report" (T. 45).

The appellant prosecuted an appeal to the Supreme Court of Illinois (T. 46). Appellant filed a brief in said Supreme Court and therein (T. 47-49) assigned the several errors relied upon for reversal as required by the Civil Practice Act of Illinois and Rule 39 of said Supreme Court. Appellant therein specifically contended that the interpretation, construction, application and effect given to Section 189 of the Illinois Insurance Code (Ill. Rev. Stat., Ch. 73, Par. 801), upon the strength of which the Superior Court had given extra-territorial effect to the injunctive order entered February 9, 1938, is unconstitutional, be-

cause there is and was no finding by the Master and no evidence whatever in the record that appellant had been a party to said liquidation proceeding; or had been served with said injunctive order; or had any notice or knowledge thereof; or that the prosecution of the action in the Missouri Court would constitute a violation thereof, and contending further in the errors relied on in the Supreme Court of Illinois that the Superior Court erred in failing to hold that the Missouri judgment was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States and the Act of Congress enacted May 26, 1790, and under the decisions of the Supreme Court of the United States, and in failing to hold that Section 189 of the Illinois Insurance Code, which the Superior Court had construed as warranting the entering of an injunction against a person not a party to the proceeding and not served with process or notice, and over whom the court below had no jurisdiction, was a denial of his constitutional rights under Section 1 of Amendment XIV of the Federal Constitution; that it abridged the privileges and immunities guaranteed to appellant under Section 2 of Article IV of the said Constitution, by denying to appellant the right to bring suit on the Missouri judgment, and that it was a denial to him of the equal protection of the laws guaranteed to him under Section 1 of Article XIV of the Federal Constitution.

In answer to said brief, the Director filed a brief wherein for the first time, in addition to Section 189 (the injunction statute), he contended that full faith and credit should be refused because the liquidation proceeding was conducted according to the Illinois Insurance Code—that is, because it was "statutory"— and contended that said Section 189 in connection with Section 191 (Title to Property of Company), Section 193 (Duties of Director of Liquidation), and 196 (Order of Dissolution) (all set out in the appendix), when legally interpreted, construed, applied and given effect, justified the judgment.

The Director also contended that, notwithstanding Chicago Lloyds was an unincorporated association, transacting business in several states, and not a corporation of Illinois, and notwithstanding no petition was filed praying a dissolution of Chicago Lloyds, or any order made pronouncing Chicago Lloyds "dissolved," in conformity with Section 196, that the legal effect of the order directing liquidation of Chicago Lloyds and of the vesting of title to its assets in the Director, was to abate any and all actions pending against said Chicago Lloyds in sister States and to completely dissolve said unincorporated association of individuals as an entity (T. 62-67).

The Director further contended that that judgment rendered against said Assocation, Chicago Lloyds, in a sister State, subsequent to February 9, 1938, was therefore void and not entitled to full faith and credit, and that such an effect given to said Sections 189, 191, 193 and 196 would not constitute a violation of any of appellant's constitutional rights.

The Director further contended that the license to conduct business, issued by the Director of Insurance annually, expired on June 30th, 1938, and that Chicago Lloyds ceased to exist when its license expired and a judgment subsequently taken against it was void. The Director further contended that, after its license to do business expired, actions against it abated. That all parties, whether policyholders or creditors, dealing with an Illinois created insurance corporation, are presumed to know its charter provisions and the statutory law governing its liquidation.

The Director further contended that the Laws of Illinois, governing the liquidation of insurance companies and judicial proceedings thereunder, are entitled to full faith and credit in the courts of sister States, notwithstanding the answer of Chicago Lloyds did not plead as a defense the laws of Illinois, nor did it plead that a decree had been entered in the liquidation proceeding.

The Director further contended that under the decisions of Missouri the judgment obtained in St. Louis was not provable against the Director; and that the judgment was subject to collateral attack.

Thereafter appellant met the Director's new contentions in a Reply Brief (T. 67-71, incl.), wherein Appellant pointed out the distinction between a corporation having a charter, and an unincorporated association, not created by the State, pointing out that Chicago Lloyds had received no charter from the State of Illinois; that Chicago Lloyds was formed by the act of its members, many of whom are residents of states other than Illinois (Claimant's Exs. 15 and 16, T. 41). Appellant specifically pointed out that Chicago Lloyds had no Charter into which Section 191 of the Illinois Insurance Code could be read (T. 68), and therefore said section was not applicable to an unincorporated association.

Appellant further pointed out in his Reply Brief that the new contentions of the Director of Insurance was not against the provability of the judgment but against its validity, and argued that the courts of one state could not be ousted of their jurisdiction by the legislature of another state (T. 70).

It was further argued that Chicago Lloyds continued to remain capable of being sued despite the entry of the order that the Director take possession of and liquidate the property, and that a judgment rendered after the entry of such an order is not void; that Chicago Lloyds continued to remain capable of being sued even if the license to do business was not renewed in Illinois, and that Illinois was required to give full faith and credit to the Missouri judgment. It was further argued that Illinois did not have exclusive jurisdiction to adjudicate claims; that competent courts of sister states could also adjudicate claims where the company is an association which has not been dissolved, and that this would be true

even if the Director of Insurance became vested with title to all the property of Chicago Lloyds wherever located (T. 67-71).

The Supreme Court affirmed the judgment of the Superior Court of Cook County (T. 86) and in and by its opinion discloses clearly that it adopted the contentions of the Director; and by so interpreting, construing, applying and giving effect to said sections of the Illinois law, it wrote an opinion in which it justified the violation of appellant's said constitutional rights by filing and entering its said opinion September 19, 1945 (T. 72-86, Inc.).

The Supreme Court of Illinois, in its opinion, finds that in disposing of the issues presented it is necessary to examine the status, rights and title of the liquidator of the insolvent insurance company under the laws of Illinois (Article XIII of Ill. Rev. Stat. 1943, chap. 73, pars. 799 et seq.). The Court sets out briefly the substance of the statutes involved as follows:

> "Section 188 of the Insurance Code (Ill. Rev. Stat. 1943, chap. 73, par. 800), specifies the grounds upon which the Director of Insurance and the Attorney General may petition a circuit or superior court for an order to show cause why an insurance company should not be liquidated. Section 189 (Par. 801) of the Insurance Code provides the court may issue an injunction to protect the assets of such insolvent company. Section 190 (Par. 802) provides, upon full hearing, the court may enter an order either to dismiss the proceeding, or find cause exists, and order the Director of Insurance to take possession of the property, business, assets, and affairs of said insolvent insurance company, and liquidate them according to law. Section 191 (Par. 803) provides that the Director, as liquidator, is vested by law with title to the property, contracts and rights of such insolvent insurance company, as of the date of the order entered by the court. Section 193 (Par. 805) fixes the duties

of the liquidator. Section 194 (Par. 806) provides that creditors, except those holding contingent claims, shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. Section 208 (Par. 820) directs the manner of fixing the time to file claims, after an order has been entered declaring the company insolvent" (T. 75).

The Illinois Supreme Court found that there were two questions involved (T. 73): (1) Whether the liquidator in question had the right to pass upon the merits or the amount of a claim arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment. (2) The effect the prior decree of the Illinois Court, appointing the liquidator for Chicago Lloyds, has upon a subsequent judgment, rendered in another state in a suit pending prior to the appointment of such liquidator. The Court found that neither of these questions had ever been decided by the United States Supreme Court as the final arbiter of such questions arising under the full-faith-and-credit clause (T. 73).

Thereafter, and within the time provided by the Rules of said Supreme Court, appellant filed a petition for rehearing (T. 87-91, Inc.), wherein he specifically directed the attention of the Court to said erroneous interpretation, application and effect that it had given to said Illinois statutes and that by such effect appellant's said constitutional rights had been disregarded and denied (T. 87), which said Petition for Rehearing was overruled and denied on the 19th day of November, 1945 (T. 91-92). Said original opinion was modified in certain respects by order of the court, as disclosed in appellant's printed Statement as to Jurisdiction (pp. 43-44 thereof).

This record discloses that no distribution of assets of said Chicago Lloyds had been made when said Missouri judgment was filed with the Director on August 2, 1941;

and that said Director filed his Tenth Report on Claims on June 10, 1942 (T. 7), and that claims were being tried and approved and disapproved, and the matter of whether or not all claims against said Chicago Lloyds that had been filed "on or before November 15, 1938," could be paid in full, or only pro rata had not been determined, when said Liquidator recommended the disallowance of appellant's claim.

No further steps can be taken in any Illinois court, and appellant's only remedy lies in an appeal to the Supreme Court of the United States from the said final judgment.

SPECIFICATIONS OF ERRORS.

(T. 110.)

I.

The Supreme Court of Illinois erred in that it has so interpreted, construed, applied and given effect to Sections 187, 188, 189, 190, 191, 193, 194, 196 and 208 of Chapter 73 of the Revised Statutes of Illinois 1937 (referred to in said opinion as Article XIII of the Illinois Insurance Code) in sustaining their validity, as to constitute said laws repugnant to and violative of appellant's constitutional rights, secured to him as a citizen of Missouri and of the United States by Article IV, Sections 1 and 2, Article VI, and Section 1 of the Fourteenth Amendment to the Constitution of the United States, as hereinafter separately and specifically enumerated, which errors were called to the attention of said Court by appellant in his original brief, his reply brief, and his petition for a rehearing filed in said court (T. 47, 67-71, 87-91).

(Assignment of Error I, T. 110.)

II.

The Illinois Supreme Court erred in denying full faith and credit, or any credit whatsoever, to appellant's Missouri judgment. As justification for its decision, it so interpreted, construed, applied and gave such an effect to said Sections 187, 188 and 189 as to render said sections repugnant to the said provisions of the United States Constitution and as to authorize the court of the State of Illinois to enter an injunctive order in the proceeding brought in the State of Illinois under said laws against Chicago Lloyds that was binding on appellant, a citizen of Missouri, without service or notice.

Said Section 189 provides that an injunction may be issued when deemed necessary to prevent interference with the proceedings or with the Director's possession or control or title, rights or interests, or to prevent interference with the conduct of the business by the Director, or that may be deemed necessary to prevent waste of assets, or the obtaining of preferences, judgments, attachments, or other like liens, or the making of any levy against such company or its property and assets while in the possession and control of the Director.

The Court held that the injunction so made and entered by said Illinois Court, pursuant to said Statute, was binding upon the appellant herein, and entitled to be given extra-territorial effect and enforcement, and to restrain appellant from continuing to prosecute a tort action filed in the State of Missouri in the year 1934 (four years prior to said Liquidation proceedings) in a Court of Missouri which had general jurisdiction and jurisdiction of the subject matter and in which cause personal service was had upon said "Chicago Lloyds," and which case was at issue and awaiting trial in Missouri at the date of the said injunctive order, notwithstanding appellant was not brought before said Illinois Court when said injunctive order was entered, and was not served with process in said proceeding, and had no notice whatever of said order, and against whom no citation for contempt of said order was ever applied for or issued by said Court, and no order entered therein finding him guilty of contempt of said order; and notwithstanding, in addition, that appellant's claim was not based upon any contractual relationship to said unincorporated association of individuals, Chicago Lloyds, whatsoever, but was based upon a tort, committed against him in the State of Missouri in 1932, for which he was there in said State of Missouri seeking redress.

Said Supreme Court of Illinois erroneously held that said injunction was violated by continuing to prosecute

said tort action to judgment subsequent to the entry of such an injunctive order; and for that reason, that by so violating said injunctive order, and as a penalty therefor, the Courts of Illinois are not required to give full faith and credit to said judgment.

(Assignment of Error II, T. 111-112.)

III.

The Illinois Supreme Court erred in denying full faith and credit, or any credit whatever, to appellant's said Missouri judgment holding that Section 191 of said Illinois law vested title in said Illinois Liquidator.

Said Court gave to said Section 191 the meaning that the court of the liquidator had exclusive jurisdiction to liquidate claims and therefore was not required to give full faith and credit to sister-state judgments. Said Supreme Court erroneously held that all actions (whether for tort or on contracts) pending in sister States, were by said "vesting of title" abated; and from and after such "vesting of title in said statutory Liquidator," the legal existence of said unincorporated association of individuals was dissolved and terminated; and that all judgments entered in sister States subsequent to said date of vesting of title (February 9, 1938) were void, and were entitled to be completely disregarded, and denied any protection or faith and credit as provided by said Article IV of the Constitution of the United States; or as provided by Sec. 1 of the said Fourteenth Amendment to the said Constitution; said Court erroneously deciding that such an interpretation and application of a law of the State of Illinois is valid, and is not repugnant to or violative of said Article VI of the Constitution of the United States.

(Assignment of Error III, T. 112-113.)

IV.

The Illinois Supreme Court erred in violating Section 1 of Article IV of the United States Constitution requiring full faith and credit to be given to the said Missouri judgment, by improperly interpreting, construing and giving effect to Sections 194 and 208 of the said Illinois Insurance Code and by its interpretation held them valid and not repugnant to appellant's said constitutional rights.

Said Section 194 provides that the rights and liabilities of the domestic company and of its creditors, except those holding contingent claims * * * shall, unless otherwise ordered by the Court be fixed as of the date of the entry of the order directing liquidation; and said Section 208 provides also that the Liquidator shall notify all persons who may have claims against said domestic company * * * and who have not filed proper proofs thereof, to present the same to him at the place specified in such notice within such time as may be fixed by the order of the Court; and that the last day for the filing of such proofs of claims being thereby required to be specified in the notice; and the said Section 208 further provides that said notice shall be given in a manner determined by the Court; and clause 2 of said Section 208 expressly provides that proofs of claim on good cause shown may be filed subsequent to the day specified, but that no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

Said Court in construing the said mentioned Sections 194 and 208 of the said Illinois Insurance Code as valid, erroneously decided that although appellant on the 21st day of September, 1938, filed with the said Liquidator within the time fixed by the Court (November 15, 1938) his said verified claim, and attached thereto a copy of said petition for damages, which petition was then pending in the Circuit Court of the City of St. Louis, and ap-

pellant further stated in said verified claim that he would file a supplemental and amended claim when judgment had been obtained in said Missouri Court, that nevertheless, since appellant had not filed with said Liquidator his amended claim, to-wit, the **final judgment** rendered in said Missouri Court April 7, 1941, until August 2, 1941—(and therefore three years after November 15, 1938, the date fixed by said Court under said sections of the laws of the State of Illinois), for **that** further reason, said Supreme Court erroneously held that said final judgment was not entitled to full faith and credit, and that to permit it to be allowed as a claim and to participate in the distribution of the assets of said judgment debtor, would violate the provisions of said Illinois laws. Thereby, said Court not only applied an Illinois Statute that by such an interpretation it held was valid, but also held that it was not repugnant to, and would not and did not violate said Article VI of the Constitution of the United States and the provisions of said Article IV, requiring that said judgment be given full faith and credit; and in addition, actually misinterpreted and misapplied said Illinois law itself.

Said law expressly provides, under clause 2 of said Section 208, that proofs of claim, on good cause shown, may be filed **subsequent** to the date specified, but that no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

Thereby, even if said sections of said Illinois law, so held to be valid and not repugnant to nor violative of said constitutional rights secured to appellant under said Article IV, it has been thus so erroneously applied by said decision, as to be repugnant to and to violate the said Fourteenth Amendment—in that, said Supreme Court has by its decision and interpretation of said law violated and disregarded appellant's constitutional rights secured to him by section 2 of Article IV; in that by such an inter-

pretation and application sustaining the validity of the law of Illinois as not repugnant to appellant's rights as a citizen of Missouri and of the United States, it has abridged his privileges and immunities as a citizen of Missouri, viz.: (to have his claim recognized and allowed as provided by said clause 2 of said Section 208, "subject to all allowed claims, proofs of which had been filed before said filing date, November 15, 1938"). That in addition said interpretation, application and effect given said law is repugnant to and violative of Section 1 of the Fourteenth Amendment to the Constitution, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of property without due process of law, nor deny to any person within its jurisdiction, the equal protection of the law.

(Assignment of Error IV, T. 113-114.)

SUMMARY OF ARGUMENT.

A.

Full Faith and Credit Must Be Given to the Missouri Judgment.

I. Section 1 of Article IV of the Constitution of the United States requires that full faith and credit be given by the State of Illinois to the Missouri judgments for money, based upon civil cause of action. Pursuant to this section Congress enacted the law of May 20, 1790, requiring that such Judgments shall have such faith and credit in every court within the United States as they have by the law or usage in the courts of the states from which they are taken.

II. The decisions of this Court require that full faith and credit be given to such judgments. This Court has said that it is aware of no exception to the full-faith-and-credit rule in respect of such money judgments. This Court has required the Courts of the several states to give full faith and credit to judgments of sister States in cases factually analogous to this one.

III. The principal purpose of the clause is to give nationwide application to rights judicially established in each state. That appellant has a right to receive the amount of the judgment from Chicago Lloyds has been judicially established by the in personam judgment rendered in Misssouri.

B.

The Injunctive Order Entered Under the Provisions of Section 189 of the Illinois Insurance (Art. XIII) Code (Par. 801) by the Superior Court of Cook County, Illinois, Was Not Binding on Appellant in Missouri.

The Injunctive Order in the Illinois Decree, entered pursuant to Section 189 of the Illinois Insurance Code, was not binding upon appellant, because:

I. He was not a party to said proceeding or in privity with or in any contractual relation to the parties to said suit;

II. That he had no actual or constructive notice of said injunctive order, and was neither served with said order nor cited for contempt thereof;

III. That to continue to prosecute his Missouri Court action to final judgment in Missouri, as a matter of fact would not, could not, and did not violate said injunctive order, since such action did not interfere with the possession or control of the assets in the possession of the statutory Liquidator;

IV. That said injunctive order had and could have no extraterritorial effect beyond the boundaries of Illinois; and therefore to hold that it had such effect and was binding upon appellant was equivalent to arbitrarily assessing as a penalty the denial of appellant's right to full faith and credit on his Missouri judgment, and was violative of appellant's constitutional rights under Article IV, Sections 1 and 2 and Article VI, and also Section 1 of the Fourteenth Amendment to the Constitution;

V. That all such contentions were raised and asserted by appellant at the earliest opportunity in the proceed-

ings, both in the lower courts and in the Supreme Court of Illinois, and passed upon adversely to appellant, as disclosed by the record.

C.

The Decree of Liquidation of February 9, 1938, and the Possession of the Assets by the Director of Insurance, Pursuant to Section 191 of the Illinois Insurance Code (Title to Property), Did Not Abate Appellant's Suit Then Pending in Missouri, Where the Court Had Jurisdiction of the Parties and of the Subject-Matter and Where Chicago Lloyds Had Pleaded to the Merits; Nor Can Section 191 Be Given the Same Construction as the National Bankruptcy Act, as Was Done by the Illinois Supreme Court in the Case at Bar.

I. Chicago Lloyds was an unincorporated association of individuals doing an insurance business under the name "Chicago Lloyds," pursuant to a written contract or power of attorney executed by each member, authorizing an attorney-in-fact, Associated Underwriters, Inc. (T. 35-37), to transact the business of the association in several states, including Illinois and Missouri. A yearly license was granted to the Association in both states. In Missouri, they transacted business pursuant to the provisions of Sections 5892-5893-5894 (R. S. Mo. 1929). The Association could be sued in Missouri under that name, service could be had upon the Association, either upon the agent, pursuant to Sec. 728 (R. S. Mo. 1929) or by service upon the Superintendent of Insurance of Missouri, pursuant to Sec. 5894 (R. S. Mo. 1929), the latter providing that service upon the said Superintendent shall be valid and be deemed personal service upon the Insurance Company so long as it shall have any policies or liabilities outstanding in the State of Missouri, even though it may have been withdrawn, been excluded from, or ceased to do busi-

ness in Missouri. Chicago Lloyds was served through its agent and also through the said Superintendent of Insurance. It also answered to the merits in the said tort action in Missouri, where the court had jurisdiction of the subject matter and of the parties, and where the case was at issue when on February 9, 1938, the liquidation petition was filed in the Superior Court of Cook County, Illinois.

II. Chicago Lloyds was not a state-created artificial body, or incorporated company having a charter and existing by virtue of the laws of Illinois, which could be dissolved under the provisions of its laws. On the contrary, Chicago Lloyds was a voluntary association of individuals unincorporated and in the nature of a partnership or joint adventure, and was merely licensed to transact their insurance business in the State of Illinois under a yearly license, which under the Illinois law had to be renewed yearly. Therefore, the legal effect of the said liquidation proceedings, pursuant to the said Illinois Insurance Code, and the decree of the Superior Court of Cook County, Illinois, pursnant thereto, directing the Insurance Director to take title to and possession of their assets as statutory liquidator, and to liquidate them, and the legal effect of Section 191 of the said Illinois Insurance Code vesting title to the assets in the said Director was not to "dissolve, destroy, terminate the existence of, and render dead this association," as might be the effect of a dissolution decree upon an Illinois-created Corporation and to abate the said suit pending in Missouri. Chicago Lloyds remained suable in Missouri and was not dissolved. Chicago Lloyds was not in the position of an insurance corporation organized under and pursuant to the laws of Illinois with an Illinois charter to do business, which charter was forfeited to the state and its very existence therefore extinguished in accordance with Section 196 of the

Illinois Insurance Code after a hearing and pursuant to a prayer in a petition for such a dissolution, as required by Section 196.

III. The decision of the Supreme Court of Illinois draws in question the validity of Sections 187, 188, 189, 190, 191, 194, 196 and 208 of Chapter 73 of the Revised Statutes of Illinois, 1937, known as Article XIII of the Illinois Insurance Code (T. 75). The Supreme Court of Illinois held them to be valid and so construed them and applied them in the case at bar as to constitute a legal and constitutional justification for its refusal, and to constitute a legal exception to obedience to Article IV of the Constitution, and for their refusal to give full faith and credit to the said Missouri judgment, as required by Section 1, Article IV, of the United States Constitution. The Supreme Court of Illinois held that the courts of other states and litigants in pending suits against Chicago Lloyds were required to recognize the rights of the liquidator, established by the decree authorized by the Illinois statute for the liquidation of insolvent insurance companies, and placed Chicago Lloyds, an unincorporated association, in the same category with corporations having charters, and holding in substance that the law of Illinois would follow Chicago Lloyds into Missouri, although the court expressly recognized the fact that it was an unincorporated association (T. 73).

The Supreme Court of Illinois (T. 83) held "full faith and credit requires the Missouri creditor, claiming rights under a judgment, to likewise recognize the binding effect of the Illinois judgment",—thus giving the full-faith-and-credit clause of the Constitution, Section 1, Article IV, a construction whereby individuals as well as states are required to give full faith and credit to judgments obtained in other states.

The construction of the Illinois Insurance Code, given

by the Supreme Court in its opinion, in holding, in effect, that the appointment of the Director of Insurance, as liquidator, dissolves Chicago Lloyds is in conflict not only with Sections 1 and 2, of Article IV, but with Article VI providing that the Constitution of the United States shall be the supreme law of the land, and with Section 1 of the Fourteenth Amendment of the said Constitution, since it deprives appellant of his property without due process of law. It is even contrary to the recent Illinois decisions holding that the appointment of a Receiver in a suit to wind up a corporation, does not dissolve the corporation itself, and that it remains a suable entity, until the final order of dissolution; that it is also contrary to the recent decisions of the Supreme Court of Illinois and to the universal rule of law, that partnerships and Joint Adventurers remain liable to be sued, and are not "dissolved," even though, a partner withdraws, which only "terminates" the partnership,—and that dissolution of the partnership is not accomplished until all of its affairs are finally closed and completed—and that the same is true of an unincorporated association not incorporated and of joint adventurers or the partnership is even dissolved.

IV. Appellant filed his claim with the Liquidator on September 21, 1938, which was within the time specified by the court. He attached a copy of the petition, which was then pending in St. Louis, to his said claim and set out that when the claim in St. Louis was reduced to judgment he would file an amended and supplemental claim.

The Illinois court erroneously held that said Illinois Insurance Code Section 191 was entitled to be given the same extra-territorial effect, that must be given to the National Bankruptcy Law (T. 76-77) that therefore it was not necessary that the appellant be served or notified in the liquidation proceeding because said proceedings are proceedings in rem, "comparable to the National Bankruptcy

Act, and that the statute vesting title (Sec. 191) should receive the same construction"; so that title to all of the property of Chicago Lloyds, with actual constructive possession, is placed in a trustee, without regard to his location or place of adjudication (T. 77) and held, that the liquidator in the case at bar became vested with the title to all of the property of Chicago Lloyds, wherever situated and that the courts of all other states are required to recognize the rights of such liquidator, established by the Illinois decree of February 9, 1938.

ARGUMENT.

A.

The Courts of Illinois Were Required to Give Full Faith and Credit to the Missouri Judgment.

I.

Section 1 of Article IV of the Constitution of the United States, and the Act of Congress enacted May 20, 1790, and the decisions of this Court required the courts of Illinois to give full faith and credit in that State to the Missouri judgment for money based upon a civil cause of action.

The Supreme Court of Illinois held that they were not.

Section 1 of Article IV of the Federal Constitution provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Pursuant to the authority vested in it by this section, Congress enacted the law commonly known as "The Act of Congress enacted May 26, 1790" (R. S. Sec. 905, 28 U. S. C. 687), which provides in part as follows:

> "And the said Records and judicial Proceedings, so authenticated, shall have such Faith and Credit given to them in every court within the United States as they have by law or usage in the court of the State from which they are taken."

The purpose of the full faith and credit clause ought not be overlooked in this case, because the Supreme Court of

Illinois, by its decision, has engrafted upon it the exception that, in cases involving the distribution of a debtor's property among its creditors, the court of the liquidation is not required to give full faith and credit to sister State judgments adjudicating claims against the debtor.

The general effect of the full faith and credit clause, and its specific effect with respect to **rights** judicially established in one State, have been stated by this Court in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 439-440, in the following language:

> "The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application (Citations). Because there is a full faith and credit clause **a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment** and a plaintiff may not for his single cause of action secure a second or greater recovery." (Emphasis supplied.)

In this case the Director is challenging, a second time, the validity of appellant's right "which has ripened into a judgment" in Missouri.

In Missouri, the judgment is an adjudication that Chicago Lloyds is indebted to the appellant in the amount thereof and could be satisfied out of any of their assets found in Missouri. By the Missouri law "a judgment is the decision or sentence of the law pronounced by a court or other competent tribunal upon the matter contained in the record. * * * It is the final consideration and determination of a court of competent jurisdiction upon matters

submitted to it" (Orchard v. Store Co., 225 Mo. 414, 468, 125 S. W. 486). "A judgment is a debt, a property right * * *" (Vitale v. Duerbeck, 338 Mo. 556, 571, 92 S. W. [2d] 691). A jugment is a debt of record. Therefore, unless an exception to the full faith and credit rule is to be made in this case, the Missouri judgment is entitled to have the same effect in Illinois; it is entitled to recognition as an adjudication that Chicago Lloyds is indebted to the appellant. The appellant does not contend that, by virtue of the Missouri judgment, he is entitled to a lien upon the debtor's property found in the possession of Liquidator, or to a preference or to a priority in the distribution thereof.

In Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438, this Court said: "We are aware of no such exception in the case of a money judgment rendered in a civil suit."

II.

This Court Has Consistently Required That Full Faith and Credit Be Given to Money Judgments Rendered on Civil Causes of Action, Even in Situations Where the Enforcement or Recognition of the Judgment in the State to Which It Was Brought Would Conflict With the Policy of That State.

Generally, the duty of giving full faith and credit to sister-State judgments has been observed by the States. It has been observed in liquidation proceedings not distinguishable in principle from the proceeding here (Pringle v. Woolworth, 90 N. Y. 511; Taylor v. Gray, 59 N. J. E. 621, 629-630). It has been observed even in cases where enforcement has required the application of the equitable remedy of imprisonment for contempt (German v. German, 122 Conn. 155, 188 A. 429; Goldberg v. Mayer, 277 N. Y. S. 799, aff'd 270 N. Y. 660, 1 N. E. [2d] 986; Little v. Little, 262

N. Y. S. 654; Biewend v. Biewend, 17 Cal. [2d] 108, 109 P. [2d] 701; Shenandoah Valley National Bank v. Hiett, 121 W. Va. 454, 6 S. E. [2d] 769; Stewart v. Stewart, 27 W. Va. 167, 174-175). The remedies given in the State to which the judgment is brought are those ordinarily appropriate to the action, thus affording like means of enforcing foreign and domestic judgments.

Several cases have been brought to this Court where States had not given full faith and credit to judgments of sister States upon the ground that to do so would conflict with their **policies**. A State may adopt a policy which prevents the recovery of a judgment in its own courts upon a given state of facts. It cannot, however, adopt a policy which would prevent the recovery of a judgment upon the same facts in other States. Full faith and credit are given to the **judgment**, not to the **cause of action**. So, where a **judgment** has been rendered by a sister State, full faith and credit must be given to that judgment, even though the State to which it is brought would not have permitted a recovery for the cause, upon which it is founded.

A State cannot adopt **a policy** against giving full faith and credit. The policy of a State is controlled by, and must remain subordinate to, the Federal Constitution. In case of conflict, the former must yield. The full faith and credit clause is a law unto the States, and a State cannot refuse to obey it on the theory that it conflicts with State policy. For, if States could successfully interpose their separate and different policies, which may and do vary from time to time within each State, as a reason for not giving full faith and credit, the positive command that "full faith and credit shall be given" would be reduced to the rule of comity, which obtains among nations **not so bound**. If State policy were to prevail over the full faith and credit clause, that clause would have little, if any, effect.

In Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 (1943), reversing 10 So. (2d) 109, Louisiana was required, by the full faith and credit clause, to give effect to a Texas judgment as a bar, under the doctrine of res judicata, to a second recovery under the Louisiana law for the same injury, notwithstanding the injured employee was a resident of Louisiana. (See pages 436-440 of the opinion.)

That case, we think, controls this one. Here, Illinois has refused to give effect to the Missouri judgment, insisting that, in order to share in the property of the debtor, the Missouri judgment creditor is required to try, de novo, before the court of Liquidation, the cause of action upon which the Missouri judgment is founded, thereby refusing to give effect to the Missouri judgment as res judicata of that cause of action.

In Williams v. North Carolina, 317 U. S. 287 (1942), reversing 220 N. C. 445, 17 S. E. (2d) 769, North Carolina was required to give full faith and credit to decrees of divorce rendered in Nevada, notwithstanding the grounds for divorce upon which the Nevada decrees were founded would not have been sufficient to support decrees for divorce under the laws of North Carolina. This Court said (pp. 302-303):

> "It is objected, however, that if such divorce decrees must be given full faith and credit, a substantial dilution of the sovereignty of other states will be effected. * * * Such is part of the price of our federal system. * * * It is a Constitution we are expounding—a Constitution which in no small measure brings separate sovereign states into an integrated whole through the medium of the full faith and credit cause * * *. So, when a court of one state * * * alters the marital status of one domiciled in that State by granting him a divorce from his absent spouse, we can not say its decree should be excepted from the full faith and credit clause merely because its enforcement or

recognition in another state would conflict with the policy of the latter."

The case here is stronger for full faith and credit than the **Williams** case, for here Illinois, like Missouri, would allow recovery for the cause upon which the Missouri judgment is founded—a damage action.

In Fauntleroy v. Lum, 210 U. S. 230, 236 (1907), reversing 80 Miss. 757, Mississippi was required to give full faith and credit to a judgment of Missouri, notwithstanding the cause of action on which the judgment was based arose on a gambling transaction, entered into in Mississippi and illegal under the laws of that State. Here, too, the circumstance that Mississippi would not have allowed recovery for the **cause of action** upon which the Missouri judgment was founded, as contrary to the policy of Mississippi in respect to gambling, was not deemed of sufficient weight to relieve it of its duty under the Constitution of giving full faith and credit to a judgment of Missouri.

A State might be especially disinclined, in a case like this, to enforce a sister-State judgment—where one of its residents, seeking to evade its laws by securing a judgment in a sister State whose laws are more favorable, brings that judgment back to the State of his residence for enforcement. That is not the situation in this case. The appellant did not leave Illinois to obtain judgment in Missouri. He brought suit in Missouri, the State of his residence and in which the debtor was doing business when suit was commenced, upon a cause of action which accrued to him in that State, and obtained a final judgment, which he could have enforced in Missouri had Chicago Lloyds any property located in Missouri.

In Kenney v. Supreme Lodge, 252 U. S. 411 (1920), reversing 285 Ill. 188, Illinois was required to give full faith and credit to a judgment of Alabama, notwithstanding the cause of action on which the judgment was based

was one for death by wrongful act inflicted in Alabama, suit upon which could not have been maintained in Illinois under its laws. It was said in this case (p. 415) that "a State cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to courts otherwise competent."

In Roche v. McDonald, 275 U. S. 449 (1927), reversing 136 Wash. 322, Washington was required to give full faith and credit to a judgment of Oregon, notwithstanding a suit on the original cause of action would have been barred in Washington before the judgment was procured in Oregon. Here there was a difference in the policies of the States in respect to the matter of limitations of action.

In Converse v. Hamilton, 224 U. S. 243, 252-253 (1911), reversing 136 Wis. 589, Wisconsin was required to give effect, at the suit of a Minnesota receiver or "quasi-assignee," to Minnesota proceedings assessing stockholders' liability, notwithstanding that "to permit the actions to be maintained in the Wisconsin courts would be contrary to the settled policy of that State in respect of the enforcement of the like liability of stockholders in its own corporations." This Court thought that Wisconsin could have no policy on the subject of the litigation, that is, on the matter whether stockholders of a **Minnesota** corporation should be liable for assessments.

In Titus v. Wallick, 306 U. S. 282, 291-292 (1938), reversing 133 Ohio St. 612, 15 N. E. (2d) 140, Ohio was required to give full faith and credit to a money judgment in a civil action rendered in New York, notwithstanding Ohio would have been under no duty to entertain the suit on which the judgment was founded because in conflict with its laws and policies. This Court said (pp. 291-292):

> **"The Ohio court is not free to withhold from petitioner (the judgment creditor) • • • the full benefit of the constitutional command that the judgment shall**

receive in the courts of Ohio such faith and credit as it is entitled to receive in New York. A state which may not constitutionally refuse to open its courts to a suit on a judgment of another state because of the nature of the cause of action merged in the judgment, Kenney v. Supreme Lodge, supra, 415, obviously **cannot, by the adoption of a particular rule of liability or of procedure, exclude from its courts a suit on the judgment.**" (Emphasis supplied.)

Illinois, by the decision in this case, did that which this Court has said cannot be done. It has adopted a rule of practice under which a creditor, who adjudicates the merits of his claim in a competent court of a sister State, will not be allowed to share in the property of the debtor merely because he did not adjudicate the merits of his claim in the court of the liquidation.

In Broderick v. Rosner, 294 U. S. 629 (1934), reversing 113 N. J. L. 305, 174 A. 507, New Jersey was required to entertain an action upon an assessment by the New York Superintendent of Banks for the superimposed liability of stockholders (which assessment, it was decided, had the effect of a judgment under the full faith and credit clause), notwithstanding a statute of New Jersey provided that no proceeding shall be maintained in the courts of that State to enforce a stockholder's statutory personal liability arising under the laws of another State, except suits in the nature "of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties." This statute had substantially the same effect as the Illinois rule, that the court of the liquidation has exclusive jurisdiction to adjudicate claims against the debtor. New Jersey, like Illinois, assumed exclusive jurisdiction over the whole proceeding for the assessment

and enforcement of stockholders' liability, and refused to give effect to assessments made by other States against stockholders residing in New Jersey. In short, New Jersey wanted exclusive jurisdiction or no part of the litigation. This Court, holding that the statute denied to the Superintendent of Banks the right to resort to the courts of New Jersey to enforce the assessments, said (p. 642):

> "The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard therein is subject to the limitations imposed by the Federal Constitution. * * * A 'State cannot escape its constitutional obligations (under the full faith and credit clause) by the simple device of denying jurisdiction in such cases to courts otherwise competent.' * * * But it (a State) may not, under the guise of merely affecting the remedy, deny the enforcement of claims otherwise within the protection of the full faith and credit clause, when its courts have general jurisdiction of the subject matter and the parties. (Citations.) For the States of the Union, the constitutional limitation imposed by the full faith and credit clause abolished, in large measure, the general principle of international law by which local policy is permitted to dominate rules of comity.
>
> "Here the nature of the cause of action brings it within the scope of the full faith and credit clause."

In this case, Illinois has denied to the appellant the right to resort to the courts of Illinois to enforce the Missouri judgment.

The same rule of law was announced by this Court in Christmas v. Russell, 72 U. S. 290, 302.

So, in this case, the denial of full faith and credit to the Missouri judgment under the rule that the court of the liquidation has exclusive jurisdiction to adjudicate claims, is but an attempt to give operation to that rule "in all the other States of the Union by denying the efficacy of any

judgment recovered in another State." (See Point IV of A this Brief.)

Cases in which full faith and credit were refused because the judgment was **void** are not, strictly, exceptions. A void judgment is a **nullity**. It only **appears** to be a judgment, and full faith and credit may be refused to it because it is a nullity. Thus, where the judgment was void because it had been rendered against an **insurance corporation**, after its dissolution, full faith and credit were not required (Pendleton v. Russell, 144 U. S. 640). This Court, however, said (p. 646): "Had the original judgment * * * been rendered when the insurance company was in existence, it would have stood as a valid claim against the assets of that company after its dissolution." The principle of that case does not apply here, because Chicago Lloyds is not an artificial and State-created entity, and has not been dissolved. It is settled law in Illinois that an order directing liquidation or appointing a liquidator does not have the effect of "dissolving" the debtor (Dillon v. Elmore, 361 Ill. 356, 363; People v. West Side Trust and Savings Bank, 302 Ill. 607, 616).

Similarly, where the judgment was **void**, because the Court which rendered it had no jurisdiction, full faith and credit were properly refused (Van Dyke v. Ill. Com. Men's Assn., 358 Ill. 458).

There is an important distinction, which the Supreme Court of Illinois has overlooked, between the **judgments**, and the **statutes** or **laws** of sister States, (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 436-440). Congress has not prescribed a measure of the faith and credit that shall be given to **statutes** or **laws** of sister States, as it has for judgments. Until it does so, the measure must be determined by this Court. This Court is the "final arbiter" of questions arising under the full faith and credit clause (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 433; Williams v. North Carolina, 317 U. S. 287, 303; Milwaukee

County v. M. E. White Co., 296 U. S. 268, 277-278; Adkins v. Adkins, 386 Ill. 346, 347). Where full faith and credit is asked for a sister-State statute or law which is in conflict with a statute or law of the State of the forum, the question, which of the laws ought to be applied, arises. A literal application of the full faith and credit clause might result in the subordination of the law of the State of the forum to the law of the sister State, even in a case where the State of the forum has a legitimate interest in the subject matter.

Accordingly, in some cases, in order to accommodate divergent State interests, this Court has not required the State of the forum to apply statutes or laws of sister States which are in conflict with its own (Pacific Employers Ins. Co. v. Industrial Accident Com. of Calif., 306 U. S. 493, 83 L. ed. 940; Alaska Packers Assn. v. Industrial Accident Com. of Calif., 294 U. S. 532, 79 L. ed. 1044). But even with respect to statutes or laws, to give full faith and credit is the rule; to refuse them is the exception.

Exceptions made in cases involving statutes or laws are not precedent for exceptions in cases involving judgments. Since a judgment for money only establishes the rights of the judgment creditor against the judgment debtor, a conflict in the policies of States, such as may arise where faith and credit are asked for sister-State statutes or laws, cannot arise where such a judgment is brought to another State for enforcement.

Full faith and credit were refused to the Missouri judgment in this case, not because it is invalid, but because of a mere matter of procedure—because the claim on which it was founded was adjudicated before a court of Missouri and not before the court of the liquidation.

In liquidation cases, where the property of a debtor has been taken by a State for distribution among the creditors of the debtor, it is beyond the reach of ordinary execution (Jackson v. Lahee, 114 Ill. 287, 295; Rickert v. Suddard,

184 Ill. 149, 153; Riehle v. Margolies, 279 U. S. 218, 225). The taking of the property of the debtor by the Liquidator has the effect of a collective execution for all the creditors of the debtor. The substantive rights of the creditors are not affected by the taking. Creditors are entitled to share ratably in proportion to their rights in the debtor's property (Evans v. Illinois Surety Company, 298 Ill. 101, 114; People v. Marquette Nat. Fire Ins. Co., 267 Ill. App. 478, 482; Torrington Co. v. Sidway-Topliff Co., 70 F. [2d] 949). For these reasons, it is only necessary in such a case that creditors present and establish their rights in order to become entitled to share in the property in due course of administration. Where a creditor has established, by the judgment of a competent court of a sister State, that the debtor is indebted to him, it should only be necessary to present that judgment to the court of the liquidation, in order to be entitled to share in the debtor's property in due course of administration (Riehle v. Margolies, 279 U. S. 218, 225). A State can not discriminate against a creditor on the ground merely that he has adjudicated his claim and established his right in a court of a sister State (Constitution of the United States, Sec. 2, Art. IV, and Sec. 1, Amendment XIV; Blake v. McClung, 172 U. S. 239; Torrington Co. v. Sidway-Topliff Co., 70 F. [2d] 949).

It is apparently the policy of Illinois to require claimants to prove their claims before the court of the liquidation and not to accept the judgments of sister States as an adjudication of the existence and amount thereof. Such a policy, when applied to sister-State judgments, is, we submit, in direct conflict with said federal Constitution, the Act of Congress, and the decisions of this Court.

III.

The Decisions of This Court, Cited in the Opinion of the Supreme Court of Illinois as Authority for Refusing to Give Full Faith and Credit to the Missouri Judgment, Are Distinguishable Either on the Ground That They Did Not Involve Sister-State Judgments, or on the Ground That the Judgment Was Void for Want of Jurisdiction in the Court Which Rendered It, or for Some Other Reason.

None of the decisions of this Court, cited by the Supreme Court of Illinois as cases in which full faith and credit were not required, is authority for refusing full faith and credit to the Missouri judgment. The Supreme Court of Illinois has stated that the questions presented have never been decided by this Court (T. 78 to 82). And in an attempted substantiation of that statement the opinion divides such cases into four classes.

First Class.

In the cases cited as being within the first class, full faith and credit were given (T. 78).

Second Class.

The opinion states that full faith and credit have been refused in cases of the second class, and that it "covers a wide field" (T. 79).

The first case of this second class which is cited (T. 79), is Wisconsin v. Pelican Ins. Co., 127 U. S. 265. That was an action, brought in this Court, on a judgment **for a penalty**. The primary question in the case concerned the extent of the **original** jurisdiction of this Court. It was decided that this Court did not have original jurisdiction to entertain the action because its original jurisdiction is limited to civil actions. The case was thereafter distin-

guished by Mr. Justice Holmes in Fauntleroy v. Lum, 210 U. S. 230, on the theory that it involved only a question of jurisdiction, not of full faith and credit. It is not even authority for the proposition that full faith and credit will not be given to a judgment for a penalty. That question is still open. As recently as 1935, this Court, in Milwaukee v. M. E. White Co., 296 U. S. 268, 275, said that it did not intimate an opinion on that question; but it did hold in that case that full faith and credit must be given to a judgment said to be for taxes. Commenting on said Pelican case, this Court said (p. 278):

> "So far as the opinion (in the Pelican Ins. Co. case) can be taken to suggest that full faith and credit is not required with respect to a judgment unless the original cause of action would have been entitled to like credit, it is inconsistent with the decisions of this Court already noted and was discredited in Fauntleroy v. Lum, supra, 36, 37, and Kenney v. Supreme Lodge, supra, 414."

That case, therefore, cannot be regarded as precedent for this one.

The opinion of the Supreme Court of Illinois also mistakenly states (T. 79) that the Pelican case was **followed** in Huntington v. Attrill, 146 U. S. 657. The Pelican case was **distinguished** in the Huntington case at page 672, and, as above stated, it was also distinguished in Fauntleroy v. Lum, 210 U. S. 230. The Huntington case **required** that full faith and credit be given to a judgment. The judgment creditor, after obtaining the judgment in New York, filed a bill in Maryland to set aside an alleged fraudulent transfer of assets by the judgment debtor and to charge those assets with the payment of the judgment. The defendant, relying on the Pelican case, contended that the judgment was for a penalty and, for that reason, was not entitled to full faith and credit. This Court reversed the Maryland court, which had refused full faith and credit.

The language distinguishing the Pelican case is at page 672 and the language reversing the Maryland court for refusing to give full faith and credit is at page 686 of the report.

Anglo-American Provision Co. v. Davis Provision Co., 191 U. S. 373, is cited (T. 79) by the Supreme Court of Illinois as another instance where full faith and credit were refused. That was an action brought in New York by one foreign corporation against another foreign corporation on a sister-State judgment. This Court upheld a statute of New York which forbad the bringing of an action in that State by one foreign corporation against another foreign corporation where the cause of action did not arise in New York. The case turned on the want of jurisdiction to entertain the action on the judgment in the court to which the judgment was brought for enforcement—on the doctrine of forum non conveniens. The full faith and credit clause does not confer **jurisdiction** to entertain actions on sister-State judgments, upon every court in the State to which a judgment is brought. A Justice of the Peace court of Illinois, the jurisdiction of which is limited to cases involving $500 or less, does not have jurisdiction of an action on a $50,000 judgment rendered by Missouri. Mr. Justice Holmes, commenting on the **Anglo-American Provision** case in **Kenney v. Supreme Lodge**, 252 U. S. 411, said that there are limits to the power of exclusion, and in **Broderick v. Rosner**, 294 U. S. 629, 643, the **Anglo-American Provision** case was confined to the factual situation there presented.

The Supreme Court of Illinois has overlooked, in two of the other cases cited as falling in said second class, the distinction between the **statutes** or **laws** of sister States, and the **judgments** of sister States (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 436-440). The opinion implies (T. 79) that in Finney v. Guy, 189 U. S. 335, full faith and credit were denied to a **judgment**. However, the action in that

case, brought in Wisconsin, was not on a **judgment**, but to enforce the **liability** of stockholders of a corporation **under the Minnesota law**. This Court decided that the complaint did not state a cause of action for the reason that, under the **Minnesota law**, as it then was, the statutory action to enforce the liability of stockholders could not be maintained outside of Minnesota. That the interpretation given said **Finney** case by the Supreme Court of Illinois is incorrect, is confirmed by **Converse v. Hamilton**, 224 U. S. 251, where, on identical facts (except that the Minnesota statute had by that time been changed) it was held necessary to give full faith and credit to the **laws** of Minnesota and to the judicial proceedings upon which the receiver's title, authority and right to relief are grounded. The **Finney** case was distinguished at page 254. The **Finney** case is not authority here, because it did not involve a money **judgment** of a sister State, but a special statutory action which could be brought **only** in Minnesota.

The distinction between **statutes** or **laws** and **judgments** was again overlooked by the Supreme Court of Illinois (T. 79) in its comment upon Griffin v. McCoach, Trustee, 313 U. S. 498. That case is cited for the proposition that "a **judgment** against an insurance company on a policy, enforceable because the beneficiary has an insurable interest in the State where the contract is made, may not be enforceable in another State, where the same interest of the beneficiary is held not to be an insurable one" (p. 502). (Emphasis added.) **In that case a judgment of one State was not presented in another as the language above quoted from this opinion of the Supreme Court of Illinois implies.** The action was brought in the United States District Court for the Northern District of Texas upon a **policy of insurance**, not upon a **judgment**. The insurance company filed an interpleader, and the controversy over the fund was between the beneficiaries named in the policy and the legal representatives of the deceased. The question was whether

a federal court sitting in Texas would apply the law of Texas or that of New York in determining whether the beneficaries had an insurable interest. If a judgment of New York had been presented for enforcement in Texas, the latter State would have been required to give full faith and credit to it, irrespective of its own law or policy relating to insurable interest. (See Kenney v. Loyal Order of Moose, 252 U. S. 411, 414; Fauntleroy v. Lum, 210 U. S. 230).

The "wide field" of said second class is thus narrowed to one "discredited" case involving a judgment for a penalty, and to a case where suit on the judgment was brought in a court without jurisdiction to entertain the action.

The judgment in this case is not for a penalty, and there can be no question but that the Superior Court of Cook County, Illinois, had jurisdiction to entertain an action on the Missouri judgment.

The Supreme Court of Illinois says (T. 79): "The nature of a case as constituting a cause of action in the several States, is not changed by the fact that it is reduced to judgment. * * *." This second type of cases represents a class which, if originally brought in the State in which enforcement of the judgment is sought, could not have been maintained, and are therefore not made valid by a judgment elsewhere" (T. 80). This excerpt is a mere restatement of the same doctrine previously announced by that same Illinois Court in Kenney v. Loyal Order of Moose, 285 Ill. 188, and REPUDIATED by this Court in reversing that case (252 U. S. 411). In that case, a judgment had been recovered in Alabama upon an action for death by wrongful act. Then an action on the Alabama judgment was brought in Illinois. If the action for death by wrongful act, upon which the Alabama judgment was founded, had been brought in Illinois, it could not have been maintained under the laws of Illinois. The Supreme

Court of Illinois, however, looking behind the judgment, held that Illinois was not required to give full faith and credit to the **judgment** because suit on the **cause of action**, on which the judgment was founded, could not have been maintained in Illinois for want of jurisdiction. It reasoned that, if courts of Illinois do not have jurisdiction of the cause of action, they do not have jurisdiction of a judgment based thereon. A similar thought is expressed in the opinion of the Supreme Court of Illinois in this case (opinion, T. 79): "The nature of a case as constituting a cause of action in the several States is not changed by the fact that it is reduced to judgment." In correcting and reversing the Supreme Court of Illinois in that case, this Court said that there were limits to the power to consider the nature of the cause of action before the foreign judgment based upon it is given effect.

Third Class.

The opinion of the Supreme Court of Illinois (T. 80) describes the third class of cases as those which arise "when the judgment or decree sought to be enforced will, if enforced, require the application of a different law to property, or the right to take property, from that of the State in which it is sought to be enforced." Five cases are cited as "instances in which the judgment of one State is unenforceable in another under the full faith and credit clause, if opposed to the law of the latter" (p. 503).

The Supreme Court of Illinois has misapprehended the holdings in these cases. The first three simply apply the principle that the State **in which land is situated** controls and governs its transmission by will or its passage in case of intestacy and that the courts of sister States have no **jurisdiction** over that "particular subject matter."

Thus, in **Clarke v. Clarke**, 178 U. S. 186, by a decree of South Carolina it was decided that a will worked an

equitable conversion of real estate situated in Connecticut, and, upon such a construction of the will, that the real estate was transmitted as personalty. This Court, proceeding upon the theory that the State where land is situated has exclusive jurisdiction over it and, for that reason, is the only State which can finally decide questions involving the mode of passing title to such land, held that Connecticut was not required to give full faith and credit to the South Carolina decree.

Olmstead v. Olmstead, 216 U. S. 386, cited by the Supreme Court of Illinois for the proposition that "a judgment determining the legitimacy of children" is not entitled to full faith and credit, does not so hold. It is but an application of the doctrine of **Clarke v. Clarke** that the law of a State in which land is situated controls and governs its descent, alienation and transfer and that neither a decree of a court nor a statute of another State can have any efficacy as to title of real estate beyond the jurisdiction of that State. This Court said (p. 392):

> "The question therefor is as to the title to real estate in the State of New York."

Nor is **Hood v. McGehee,** 237 U. S. 611, authority for the proposition that "the manner of adoption of children" is not entitled to full faith and credit. It, too, is simply another application of **Clarke v. Clarke.**

Robertson v. Pickrell, 109 U. S. 608, 27 L. ed. 1049, is a decision to the same effect.

Cases of this character have no application here because Missouri had jurisdiction to hear and determine the *in personam* action for damages brought by appellant against Chicago Lloyds.

Gasquet v. Fenner, 247 U. S. 16, is cited as an instance in which the judgment of one State on "the capacity of a

lunatic'' is unenforceable in another State if opposed to the law of the latter.

Manifestly, this case did not deny full faith and credit. It only held that, under the Louisiana Code, the Louisiana judgment declaring the plaintiff to be incompetent must be vacated before he could resume the exercise of his rights.

Pink v. A. A. A. Highway Express, Inc., 314 U. S. 201, is cited as a case where the **judgment** of one State on "the interpretation of contracts'' is unenforceable in another if opposed to the law of the latter. The case does not so hold. Here, again, the distinction between the **judgments** and **laws** of sister States was overlooked. There was no **judgment** interpreting a contract in that case.

The **Pink** case, unlike this case, did not involve a **judgment** based on personal service in the State where the judicial proceedings were had. It was not determined in New York, as it was determined in Missouri in the present case, that the defendants were personally liable. The question whether the defendants were members had not been decided in New York, and, when they were sued in Georgia, the courts of that State were required to decide that question and, in order to do so, to construe the contract. If the defendants had been served personally in New York and if New York had held, upon its construction of the contract, that the defendants were members of the company, and so had rendered a **judgment in personam** against them, then, if a suit on that **judgment** had been brought in Georgia, Georgia could not, under the decisions of this Court, go behind the New York judgment, place its own construction upon the contract, and refuse to give full faith and credit to the New York judgment.

The cases placed in the third class are clearly inapplicable to the Missouri money judgment and are not authority for refusing full faith and credit to it.

Fourth Class.

The opinion of the Supreme Court of Illinois states (T. 80):

> "In recent years there has been a trend towards yet another class of cases involving full faith. Where a party has an option to proceed under the laws of one or two or more States having similar laws, as in compensation cases, where the liability may be enforced either where the contract of employment is made, or where the injury occurs; and cases involving the liquidation of corporations, where they acquire title to the property by the judgment and laws of one State but have property in another which is subject to preferences which may be created by the State law of the latter."

The compensation cases cited are Pacific Employers Ins. Co. v. Industrial Accident Com. of Calif., 306 U. S. 493, 83 L. ed. 940; Alaska Packers Ass'n v. Industrial Accident Com. of California, 294 U. S. 532, 79 L. ed. 1044; Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 88 L. ed. 149.

The cases cited in the paragraph dealing with liquidations (T. 82) are Relf v. Rundle, 103 U. S. 222; Clark v. Williard, 292 U. S. 112; Clark v. Williard, 294 U. S. 211; Robertson v. Pickrell, 109 U. S. 608; Harkin v. Brundage, 276 U. S. 36; Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189.

None of these cases is authority for refusing full faith and credit to sister-State money judgments based upon civil causes of action. Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is strong authority for requiring them.

The question which law ought to be applied arose in Alaska Packers Ass'n v. Industrial Accident Commission, 294 U. S. 532, and this Court held that California, the State of the forum, which was also the State of the employer and employee, was free to apply its own compensation law to an injury to an employee received in Alaska

and was not required to apply the law of the State where the injury occurred. Similarly, in Pacific Employers Insurance Co. v. Industrial Accident Commission of California, 306 U. S. 493, this Court held that the State of the forum, which also was the State where the injury had occurred, was free to apply its own law and was not required to apply the law of the State of the employer and employee. A **judgment** was not involved in either case.

These two cases presented the question whether the State of the forum is required to apply the **law** or **statute** of a sister State or whether it may apply its own law to a proceeding, **not reduced to judgment**, pending before it and involving a matter of local or domestic interest.

On the other hand, Magnolia Petroleum Company v. Hunt, 320 U. S. 430, presented the question whether, under the full faith and credit clause, a **judgment** rendered by one State in a compensation case is a bar to a second action for the same injury brought in another State under the laws of the latter. This Court held that the **judgment** of Texas was a bar, on principles of res judicata, to a second recovery for the same cause of action, and that under the full faith and credit clause, Louisiana was required to give effect to the Texas judgment as a bar to a proceeding brought in Louisiana upon the same cause of action.

These three cases illustrate the distinction between the application of the full faith and credit clause to sister-State **statutes** or **laws** and its application to **judgments**. In the first two cases, the State of the forum was **not** required to apply sister-State statutes; but in the third, the State of the forum **was** required to give effect to the sister-State **judgment**.

Commenting upon and reasoning from these three compensation cases, the Supreme Court of Illinois draws the conclusion (T. 81) that "the result is analogous to that resulting from taking possession of the res—viz., the court

first obtaining possession, may not be disturbed by actions of other courts having concurrent jurisdiction." However, this Court, in deciding those cases, did not draw any such analogy that "the court first obtaining possession (of the res) may not be disturbed by other courts having concurrent jurisdiction." In none of said compensation cases was there a conflict between two courts or a possibility that one court would "be disturbed by other courts having concurrent jurisdiction." Therefore, the avoidance of a conflict or collision between courts was not a factor in those decisions. They rest simply upon the principles governing the application of the full faith and credit clause, to sister-State laws.

Relf v. Rundle and the two Clark v. Williard cases cited by Illinois Supreme Court (T. 82) did not hold that full faith and credit are not required for a sister-State judgment. They relate generally to the title acquired by a statutory liquidator of a legally dissolved insurance company and, clearly, are not authority for refusing full faith and credit to this Missouri judgment. These cases are entirely without application here for the reason that in this case there is no question which concerns the res, or the right to administer it. The right of the Director to administer the res has not been questioned in this case. There is no question concerning preferences to Missouri creditors, with respect to property located in Missouri. There is no question concerning liens on property in the possession of the Director. The matter of the right to administer the res is not one of the issues in this case. **It is introduced into the case for the purpose of developing the new legal theory,** that the court of the liquidation has exclusive jurisdiction to adjudicate claims; and, for that reason, is not required to give full faith and credit to judgments of sister States adjudicating claims.

The two remaining cases—Harkin v. Brundage, 276 U. S.

36, and Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189, cited for the proposition "that the court which first acquires jurisdiction over the res is entitled to retain it and dispose of it in accordance with the law and processes of its jurisdiction," are not authority for refusing full faith and credit to sister-State **money judgments**. They are silent on the subject of full faith and credit. They did not pass upon the matter of **adjudication of claims** against the debtor in liquidation, but with the matter of **administering** the res. They dealt with the question—which of two courts, each having jurisdiction to administer a res, will be entitled to do so. In those cases there was a conflict between two courts or agencies of the government, both of which had jurisdiction to take, administer and dispose of the res. The exercise of jurisdiction by both would bring them into collision, to prevent which, the rule was adopted, that the court first acquiring jurisdiction over the res is entitled to administer and dispose of it without interference by the other. In this case there is no such conflict. Missouri asserts no jurisdiction over the res.

There is no discernible factual similarity between the compensation cases and the liquidation cases. Nor is there any similarity in the principles that were decided. The compensation cases presented questions regarding full faith and credit and did not touch the matter of jurisdiction over a res. The liquidation cases dealt with the question, which of two courts having concurrent jurisdiction, shall administer the res, and did not touch on full faith and credit.

Of the four classes of cases cited in the opinion of the Supreme Court of Illinois, none is precedent for refusing to give full faith and credit to this Missouri judgment. They show only that, in some situations (radically different than the one here), full faith and credit have not

been required. The opinion does not demonstrate **how** this case falls within, or is governed by, those which are cited. There is, in this case, no question (1) of want of jurisdiction in the court which **rendered** the judgment or of want of jurisdiction in the court to which the judgment was **brought**; (2) of the passage, by the Missouri judgment, of title to land situated in Illinois; or (3) of the application of the **law** of Illinois rather than that of Missouri to a cause of action not reduced to judgment.

If the Texas award in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, was res judicata in Louisiana under the full faith and credit clause, it is not apparent why the Missouri judgment here is not res judicata in Illinois.

IV.

Full Faith and Credit Cannot Be Refused to Sister-State Judgments Upon the Theory Adopted by the Supreme Court of Illinois, That the Court of the Liquidation Is the Only Court With Power to Adjudicate Claims Against the Debtor. The Court of the Liquidation Does Not Have Exclusive Jurisdiction to Adjudicate Claims Against the Debtor (Sec. 191, Ill. Ins. Code).

The Supreme Court of Illinois rests its refusal to give full faith and credit to the Missouri judgment, primarily upon Section 191 of the Illinois Insurance Code (Ill. Rev. Stat., Ch. 73, Par. 803), which purports to vest title to the property of certain kinds of debtors in the Director. It holds that title became vested in the Director in this case, wherein the debtor is an unincorporated association of individuals, who are only licensed yearly to transact their business in Illinois, that, therefore, the court of the liquidation has jurisdiction over the res; and that, therefore, the court of the liquidation is "entitled to retain it and dispose of it in accordance with the laws and processes of its jurisdiction" (meaning, evidently, that the court

of the liquidation not only has exclusive jurisdiction to administer the res, but also that it has exclusive jurisdiction to adjudicate claims against the debtor); and, therefore, because it has exclusive jurisdiction to liquidate claims, it is not required to give full faith and credit to sister-State judgments adjudicating claims against the debtor.

It must again be emphasized that no issue has been raised in this case concerning the right to administer the res in Illinois. Nor has an issue been raised concerning the jurisdiction of the court of the liquidation over that res. Missouri asserts no jurisdiction over it. There has been no levy upon, or sequestration of, that res, and there is no issue concerning a lien against that res or concerning a right to a preference or priority therein. The only question is whether the full faith and credit clause requires that the Missouri judgment against Chicago Lloyds, in personam, shall be allowed as a general claim to be paid ratably in due course of administration by the Director from that res.

The matter of the title of the Director to assets of Chicago Lloyds, an unincorporated association of individuals outside of the State of Illinois, **is introduced in the opinion, for the purpose of developing the legal theory** applicable to a dissolved Illinois created Insurance Corporation, **upon which full faith and credit may be refused to the Missouri judgment.** It is assumed in the opinion that, because jurisdiction to administer that res in Illinois, is exclusive, therefore jurisdiction to adjudicate claims against Chicago Lloyds is **also** exclusive.

It may well be doubted whether title to the property of an unincorporated association, whose property may be located in several States, can become vested by operation of a law of Illinois in a liquidator designated by that State. (Some of the property involved in this proceeding was owned by the members of Chicago Lloyds individually and was pledged by them to secure their several liabilities.)

Although, at the outset of its opinion, the Supreme Court of Illinois **correctly** states that Chicago Lloyds is an unincorporated association (T. 73), it later treats the association precisely as if they were a corporation which had received a charter from the State of Illinois and had been legally dissolved (T. 83).

The opinion cites Relf v. Rundle, 103 U. S. 222 (T. 82), but that was a case involving an insurance **corporation**—a corporation which had been legally dissolved. This case involves an unincorporated association which has not been dissolved. The theory upon which title to the property of a dissolved **corporation** becomes vested in the statutory liquidator designated by the State of incorporation, rests upon the principle that the statute, enacted by the State of incorporation which so provides, is part of the charter which the corporation has received from that State (Relf v. Rundle, 103 U. S. 222, 225). However, "Chicago Lloyds" has received no charter from the State of Illinois (Roach & Co. v. Harding, 348 Ill. 454, 464; 7 C. J. S., "Associations," 19, 21). It was formed by the act of its members, many not even residents of Illinois (T. 41 and 35, 36 and 37) (Claimant's Exhs. Nos. 15 and 16). They had transacted business in Illinois under a new license, renewable yearly. They also transacted business in Missouri under a license and may have done so in other States. Where an unincorporated association owns property located in more than one State, which of those States has the power of designating the "agent" (if he can be called an agent of the association) to liquidate **all** its property, wherever located? A corporation, which is created by the laws of only one of the States, carries its charter and laws of the State of its creation governing it, into other States in which it transacts business, and so the State of incorporation may designate the liquidating agent. An association has no charter to carry. "Chicago Lloyds" has no charter into which Section 191 of the Code can be read.

Consequently, that theory cannot apply to an unincorporated association which has commited a tort, upon which a valid final judgment has been rendered.

But even if it were to be assumed that the Director becomes vested with title to the property of an unincorporated association, it is not apparent how that circumstance would relieve a State of its duty to give full faith and credit to sister-State judgments, in personam, which do not affect that property or the title thereto. Vesting title in the Director does not make it impossible for Illinois to give full faith and credit to the Missouri judgment. Giving full faith and credit to sister-State judgments would in no respect whatsoever interfere with the administration of the res by the Director or with his title, **if he has title.** Vesting title in the Director did not have the effect of dissolving or of terminating the legal existence of Chicago Lloyds or of preventing the rendering of valid judgments, in personam against it (Dillon v. Elmore, 361 Ill. 356, 363; People v. West Side Trust and Savings Bank, 362 Ill. 607, 616; Commercial Trust Co. v. Mallers, 242 Ill. 50; Willits v. Waite, 25 N. Y. 577, 581; Clark v. Williard, 294 U. S. 211, 79 L. ed. 865).

There is a separate section in the Code governing the "dissolution of insurance corporations," which requires the filing of a petition containing a prayer for dissolution, the service of an order to show cause, and a full hearing before a decree dissolving the company may be entered (Ill. Rev. Stat., Ch. 73, Par. 808). There is no provision in the Code for the dissolution of unincorporated associations. No decree dissolving, or purporting to dissolve, "Chicago Lloyds" has been entered in this proceeding. The rule in Illinois is that **even** the dissolution of a partnership does not terminate its existence, and that it continues until the winding up of the partnership affairs is completed (Ill. Rev. Stat., Chap. 106½, Sec. 30; Thanos v. Thanos, 313 Ill. 499, 506; Heidenreich v. Bremner, 260 Ill.

439, 455). Moreover, "Chicago Lloyds" could not have been dissolved by the order finding that sufficient cause for liquidation existed because, at the time that order was entered, its members had not been made parties to the proceeding (Evans v. Illinois Surety Company, 298 Ill. 101, 117). Vesting title in the Director did not abate pending actions against "Chicago Lloyds" or oust other courts of their jurisdiction (1 C. J. S., "Abatement and Revival," 151-153, secs. 108, 109; 19 C. J. S., "Corporations," 1206, 1220; 12a C. J., "Corporations," 985; Ohio and Miss. Ry. Co. v. Russell, 115 Ill. 52, 57; Chemical Nat'l Bank v. Hartford Deposit Co., 156 Ill. 522, aff'd 161 U. S. 1, 40 L. ed. 595; Ewen v. American Fidelity Co., 261 U. S. 322; Toledo, W. & W. Ry. Co. v. Beggs, 85 Ill. 80; Mercantile Ins. Co. v. Jaynes, 87 Ill. 199; People v. Barnett, 91 Ill. 422, 431; Pine Lake Iron Co. v. LaFayette Car Works, 53 Fed. 853; Venner v. Denver Union Water Works, 40 Colo. 212, 90 P. 623, 629; O'Mara v. Newton & N. W. Ry. Co., 156 Ia. 701, 137 N. W. 942; Pringle v. Woolworth, 90 N. Y. 502; Hatch v. Morosco Holding Co., 19 F. (2d) 766; Evans v. Illinois Surety Co., 298 Ill. 101, 111).

This principle was conceded even in Evans v. Illinois Surety Co., 319 Ill. 105, 110, where full faith and credit were refused, the Court saying: "The appointment of the receiver did not necessarily abate pending actions against the surety company."

Even if title vested in the Director, his title would be that of a trustee, for the purpose of liquidating the property and distributing it among creditors. It still would be necessary to ascertain who were creditors, and the amounts of their claims. The determination that the appellant was a creditor and the amount of his claim could be made as well by the Missouri Court as by the Court of the liquidation.

The Supreme Court of Illinois apparently has assumed that jurisdiction over the res draws to the court of the

liquidation exclusive jurisdiction to adjudicate claims against the debtor; and that, for that reason, it is not required to give full faith and credit to sister-State judgments adjudicating claims. This Court, however, has decided in many cases that possession of the res does not draw unto the court which has possession **exclusive** jurisdiction to adjudicate claims.

In Riehle v. Margolies, 279 U. S. 218, 223, 224, the distinction between control over the property of a debtor in liquidation and the adjudication of claims, in personam, against that debtor, was noted and applied. In that case it was said that an order which results in the distribution of a debtor's property among creditors has a two-fold aspect: (1) to the extent that it deals **directly with the property**, the jurisdiction of the court in possession of the res is exclusive; and (2) in the matter of determining the **existence and amount of the indebtedness to the creditors seeking to participate**, the jurisdiction of the court in possession of the res is not exclusive. This Court said in that case: "The appointment of a receiver * * *, confers upon (the court) * * * jurisdiction to decide all questions incidental to the preservation, collection and distribution of the assets. * * * **But** the appointment of the receiver does not necessarily draw to the federal court the **exclusive** right to determine all questions or rights affecting the debtor's estate." In later decisions this Court has held that the adjudication of a claim is not a proceeding in rem; that a proceeding to adjudicate a claim, only establishes rights; that a judgment adjudicating a claim, does not deal with property and does not order distribution,—that it merely adjudges a question which precedes distribution (Commonwealth Co. v. Bradford, 297 U. S. 613, 619; followed in General Baking Co. v. Harr, 300 U. S. 433; Fischer v. American United Insurance Co., 314 U. S. 549, 555; Dickinson v. Universal Service Stations, Inc., 100 F. [2d] 753; Dempsey v. Pink, 92 F. [2d] 572. Cf. U. S.

v. Bank of N. Y. Co., 296 U. S. 493, 478). Harkin v. Brundage, 276 U. S. 36, and Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189, are not at variance with the doctrine of Riehle v. Margolies.

It follows from the foregoing, that even if title vested in the Director, the court of the liquidation did not have exclusive jurisdiction to adjudicate claims against Chicago Lloyds.

Illinois, however, seems to have adopted the rule of practice that a receivership court has exclusive jurisdiction to adjudicate claims against the debtor (Evans v. Illinois Surety Company, 319 Ill. 105). (Actually, the Missouri Court **also** had jurisdiction to do so, and its jurisdiction attached long before the commencement of the liquidation proceeding.) In reaching that conclusion in the Evans case (which was directly criticized in Hatch v. Morosco, 19 F. (2d) 766, affirmed in Riehle v. Margolies, 279 U. S. 218), the Supreme Court of Illinois advanced and asserted two reasons: (1) that a receivership court, through its receiver, is in possession of the res; and (2) that a receiver may not be sued without the consent of the court appointing him.

Both reasons have but little force even in the case of a chancery **receiver**, and are utterly inapplicable to a **statutory** receiver like the Director here. For here, the Director, and not the court of the liquidation, is in possession of the res; and the Director, who was not appointed, and who could not have been appointed by the court (People v. Niehaus, 356 Ill. 104), may be sued without permission from **any** court (Bride v. Stormer, 368 Ill. 524, 526).

An examination of the opinion in Evans v. Illinois Surety Co., 319 Ill. 105, will disclose that **full faith and credit** were not refused to the judgment there upon the theory that the court of the liquidation had exclusive jurisdiction to adjudicate claims. The Court, in that case,

first decided that the court of the liquidation had exclusize jurisdiction to adjudicate claims and was not required, **by rules of comity**, to honor judgments of other States adjudicating claims. Then it considered whether the court of the liquidation was required, **by the federal Constitution**, to honor judgments of other States adjudicating claims, and it decided that it was not required to do so SOLELY upon the ground that **"the constitutional provision has no application to the receiver"** (pp. 112-113. See Point VII hereof.)

Whatever force the Illinois rule of exclusive jurisdiction to adjudicate claims may have in cases which do not involve sister-State judgments, (e. g. a judgment of another court of Illinois to which the full faith and credit clause does not apply), it cannot prevail against the express command of the Federal Constitution in a situation where that clause is applicable. The duty of giving full faith and credit presents a **Federal** question governed by Federal law. Illinois is required by the supreme law of the land to give full faith and credit to sister-State judgments and it cannot escape its duty merely by adopting a rule whereunder it **asserts** exclusive jurisdiction to adjudicate claims, notwithstanding in fact and in law, other courts also have jurisdiction to do so. (Titus v. Wallick, 306 U. S. 282, 291, 292; Broderick v. Rosner, 294 U. S. 629.)

It seems quite clear that to allow the judgment as a general unsecured claim will not "impose a different method of distribution" as the Supreme Court of Illinois supposes (T. 85). To allow the judgment as a claim does not affect the **method** of distribution at all, but has the effect, merely, of including the judgment creditor among other creditors entitled to participate in the res.

To allow the judgment as a general unsecured claim will not create a right in favor of the judgment creditor "against the assets," as the Supreme Court of Illinois supposes (T. 84, 85). Like every other unsecured credi-

tor whose claim is allowed, the judgment creditor will only be entitled to receive from the Director in due course of administration, the ratable share of the proceeds of the property of the judgment debtor allocable to his claim.

To allow the judgment as a general unsecured claim will not place the appellant "in a better position in the State to which the judgment is brought than he was in the State in which the judgment was rendered" as the Supreme Court of Illinois supposes (T. 84-85). Although the appellant may be able to realize something upon his judgment in Illinois, and unable to do so in Missouri, full faith and credit cannot be refused for that reason, for, in most cases, the **only** reason for bringing a judgment rendered in one State to another, is that it cannot be collected or enforced in the former.

The decision in this case is aimed at preventing the adjudication of claims by courts of sister States against a company whose property is being liquidated in Illinois. At bottom, the appellant's claim was disallowed in Illinois because he did not "try the cause" of action de novo in Illinois (when the Illinois two-year Statute of Limitations could have been invoked as a complete defense). As a penalty for failure to adjudicate and try his claim before the court of the liquidation, Illinois refuses to give full faith and credit to a sister-State judgment. As a practical matter, the effect of so refusing full faith and credit is to compel the adjudication of claims exclusively before the court of liquidation. (See "Judgment Claims in Receivership Proceedings," by Judge John K. Beach, 30 Yale Law Journal 674.) However, the full faith and credit clause and the Act of Congress "have made that which has been adjudicated in **one** State, res judicata to the same extent in every other" (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438), and so the merits are not open to re-examination.

Illinois has here attempted to give, and by its decision

in this case has given, extra-territorial effect to its rule of practice and to its assertion exclusive jurisdiction to adjudicate claims by refusing full faith and credit to judgments of sister States, and by refusing to permit those judgments to share in the property in its possession. This, we submit, Illinois cannot do. It cannot, properly, assert exclusive jurisdiction to adjudicate claims, to liquidate which it does not have exclusive jurisdiction. Illinois cannot, directly, prevent Missouri from adjudicating matters within its jurisdiction. Illinois cannot, directly, prevent a resident of Missouri from resorting to the courts of Illinois upon an action which accrued to him in Missouri against an unincorporated association of individuals doing business in Missouri under the provisions and burdens and liabilities there assumed, and served with process in Missouri. Illinois cannot, directly, give extra-territorial effect to its assertion of exclusive jurisdiction to adjudicate claims against Chicago Lloyds. Illinois should not be permitted to accomplish, indirectly, by refusing full faith and credit to the Missouri judgment, what it cannot do directly.

The Illinois rule of practice cannot prevail over the constitutional provision and the Act of Congress. That rule is the converse of the "device of **denying** jurisdiction" made use of by this same Illinois Supreme Court which was repudiated by this Court in Kenney v. Supreme Lodge, 252 U. S. 411. Here, Illinois refuses full faith and credit upon the **assertion** that the court of the liquidation has exclusive jurisdiction; there, Illinois refused full faith and credit upon the theory that its courts did not have jurisdiction.

The effect of the rule of exclusive jurisdiction, is precisely the same as that of the New Jersey statute, which was stricken down in Broderick v. Rosner, 294 U. S. 629. In that case, exclusive jurisdiction was asserted on the

basis of an act of the New Jersey legislature. Here exclusive jurisdiction is asserted on the basis of an act of the Illinois legislature, coupled with "the construction placed thereon" by the Court. In either case, the assertion of exclusive jurisdiction is the act of the State, acting through its instruments, the legislative branch in the Broderick case, and the legislative **and** judicial branches here. The language in Titus v. Wallick, 306 U. S. 282, 291-292, is so pertinent that it merits quotation:

> "Obviously (a State) cannot, by the adoption of a particular rule of liability, or of procedure, exclude from its courts such a judgment."

V.

Full Faith and Credit Cannot Be Refused to the Missouri Judgment Upon the Theory That "Full Faith and Credit Requires the Missouri Creditor Claiming Rights Under a Judgment, to Likewise Recognize the Binding Effect of the Illinois Judgment." The Injunction Under Sec. 189 of the Ill. Ins. Code Has No Extra-territorial Effect.

The Supreme Court of Illinois has said (T. 83):

> "Full faith and credit requires the Missouri creditor claiming rights under a judgment to likewise **recognize** the binding effect of the Illinois judgment when he seeks satisfaction from assets in control of Illinois courts."

It also has said (T. 84):

> "Under such circumstances it seems logical to hold appellant was bound **under the full faith and credit clause** to **recognize** the effect of this Illinois decree * * *."

It will be observed from this language that, in the view

of the Supreme Court of Illinois, the appellant was required to "recognize" the order directing liquidation, not upon the theory that he was bound thereby as a party to the proceeding in which the order was entered, but "under the full faith and credit clause."

In its general sense, the word "recognize" means to take notice or knowledge of. From the decision in this case, it is evident that the Supreme Court of Illinois had something more than merely taking notice of the order directing liquidation in mind. The opinion does not state precisely, but leaves to inference, what it was that appellant was required to do in addition to taking notice of the order directing liquidation.

With respect to the res, the court of the liquidation has exclusive jurisdiction (Riehle v. Margolies, 279 U. S. 218), and creditors are bound to take notice of the order which results in the distribution of a debtor's property among creditors, **not** on the theory that they are required to give full faith and credit to the order, but because such property, in custodia legis, is beyond the reach of ordinary execution, and the only way creditors can participate therein is from the hands of the Director. The possession, or the title, of the Liquidator is in the nature of a collective execution for the benefit of **all** creditors and, therefore, one creditor ought not be permitted to seize property on his own behalf and so disturb the orderly and equitable distribution thereof among all creditors. The local creditors in another State, whose policy it is to honor the title of the liquidator of a corporation debtor appointed by the State of incorporation, rather than to prefer local creditors, by giving full faith and credit to the order directing liquidation, will not be permitted to reach **property** located in that State, title to which has vested in the liquidator of a legally dissolved insurance corporation. (McDonald v. Pacific State Life Insurance Co., 343 Mo. 1232, 124 S. W. [2d] 1157.) The consequence that a credi-

tor may not reach **property** is consistent with **Riehle v. Margolies**, because the court of the liquidation has exclusive jurisdiction over the res.

The implication of the decision of the Supreme Court of Illinois, however, extends beyond the mere recognition of the **effect** of the order directing liquidation as barring creditors from reaching **proprety** in the control of the court of the liquidation. Since the appellant has made no attempt to reach property, the remarks of that Court must have been directed against something else; and evidently they were directed against the adjudication of claims against the debtor in courts of sister States, for there is nothing else in the case to which they can apply.

Insofar as the opinion holds or implies, that the order directing liquidation operates as a bar to the adjudication of claims against the debtor by courts of sister States, it is inconsistent with the doctrine of Riehle v. Margolies, because, under that case, the court of the liquidation does not have exclusive jurisdiction to adjudicate claims.

The opinion does not distinguish between jurisdiction to administer the res, and jurisdiction to adjudicate claims on their merits; and it seems to be assumed therein that, because the order directing liquidation, operates to bar the sequestration of property, it operates also to bar the adjudication of claims by other courts. The authorities cited, hold only that such an order bars a creditor from sequestering property of the debtor in the possession of a liquidator for the purpose of satisfying his own claim. They do not hold that the order bars the adjudication of claims in the courts of sister States.

The opinion cites McDonald v. Pacific States Life Ins. Co., 343 Mo. 1232, 124 S. W. (2d) 1157 (T. 83), but it was only held there, that a Missouri judgment creditor may not levy on property located in Missouri, title to which had passed to the liquidator of an insurance corporate

debtor, dissolved by the State of incorporation, and who has been designated as its successor in title, it being the policy of Missouri to honor the title of the Liquidator. The Missouri court said, at page 1163:

> "Respondent is not contending for the right to have his claim paid in the order set forth in the Missouri statute. He is attempting to have his claim paid in full in preference to all other claims, even as to administration expenses and taxes."

That case does not pass upon the effect of the order of liquidation as a bar to the adjudication of claims against the debtor in courts other than the court of the liquidation.

There is another complete answer to the theory of the Supreme Court of Illinois that "appellant was bound **under the full faith and credit clause** to recognize the effect of the Illinois decree" (T. 84). (Emphasis added.) Although Section 1 of Article IV does not provide in express words by whom full faith and credit shall be given, it is clear from the purpose of the clause—"to alter the status of the several States as independent foreign sovereigns • • • and to make them parts of a single nation"—and from the historical background, that it is to **States**, not to persons, that the command of that clause is directed. This view is confirmed by the language of the Act of Congress enacted shortly after the adoption of the federal Constitution, that records and judicial proceedings, authenticated in the manner therein provided, shall have such faith and credit in every **court** within the United States," etc. It is the **States**, acting through their agencies of government, not the **persons** in them, who are required to give full faith and credit. No decision we have read, other than the one here under review, and, perhaps, Evans v. Illinois Surety Co., 319 Ill. 105, has sugested that **persons** in their individual capacities, are bound to give

full faith and credit. It is not clear how persons would be able to give full faith and credit.

In this view, it was not encumbent upon the appellant to "recognize" or to give full faith and credit to the order of the court of the liquidation. It evidently is the theory of the Supreme Court of Illinois that, upon the entry of the order directing liquidation, it became the appellant's duty, voluntarily to discontinue the Missouri action. We think not. If the Director supposed that, under the full faith and credit clause, the order directing liquidation was **a bar** to the prosecution of the action pending in Missouri, he ought to have appeared and defended in the Missouri Court, and presented an authenticated copy of that order to the Missouri court and, by appropriate pleading, interposed it as **a bar** to the further prosecution of that action. This he refused to do, but simply withdrew. Had the questions, whether the full faith and credit clause required the Missouri Court or the appellant to "recognize" the order directing liquidation, and whether, because of it, that Court or the appellant ought to refrain from proceeding with the pending action, been presented to that Court, a reviewable decision might have been obtained thereon.

Even if the order directing liquidation had been properly interposed, it is difficult to see how the giving of full faith and credit to it would produce a discontinuance of the Missouri action. Such an order does not **abate** actions pending against the debtor at the time it is entered (1 C. J. S., "Abatement and Revival," 151-153, Secs. 108, 109; 19 C. J. S., "Corporations" 1206, 1220; 12a C. J., "Corporations" 985; Ohio and Miss. Ry. Co. v. Russell, 115 Ill. 52, 57; Chemical Nat'l Bank v. Hartford Deposit Co., 156 Ill. 522, aff'd 161 U. S. 1, 40 L. ed. 595; Ewen v. American Fidelity Co., 261 U. S. 322; Toledo, W. & W. Ry. Co. v. Beggs, 85 Ill. 80; Mercantile Ins. Co. v. Jaynes, 87 Ill. 199; People v. Barnett, 91 Ill. 422, 431; Pine Lake Iron

Co. LaFayette Car Works, 53 Fed. 853; Yenner v. Denver Union Water Works, 40 Colo. 212, 90 P. 623, 629; O'Mara v. Newton & N. W. Ry. Co., 156 Ia. 701, 137 N. W. 942; Pringle v. Woolworth, 90 N. Y. 502; Hatch v. Morosco Holding Co., 19 F. [2d] 766; Evans v. Illinois Surety Co., 298 Ill. 101, 111).

But, even if the assumption is indulged that, upon some theory, the Missouri action ought to have been discontinued, and that the Missouri Court erred in entering the judgment, that judgment, even if erroneous, would not be **void.** Courts of Illinois cannot sit in review of the Courts of Missouri. The judgment is final and, however erroneous, is entitled to full faith and credit. Illinois cannot refuse full faith and credit to it in retaliation for the **supposed** failure of Missouri to give full faith and credit to the order directing liquidation. If one State were to be permitted to refuse full faith and credit to a judgment of another, in retaliation for a previous refusal by the latter to give full faith and credit to a judgment of the former—perhaps in unrelated matters—there might be an early end to the full faith and credit clause.

The language in the opinion has the flavor of the doctrine of res judicata. In addition to the excerpts quoted at the beginning of this Point, the Supreme Court of Illinois says:

> "No case has been called to our attention which gives to the judgments of one State the force and effect that it has therein as against a prior judgment in another State, under which possession of property has been taken by the officer of the latter court" (T. 82).

Manifestly, the order directing liquidation did not adjudicate, and does not purport to be an adjudication of appellant's claim against Chicago Lloyds. The matter of appellant's claim was not then before the court. There-

fore, the order directing liquidation could not be res judicata of appellant's claim, and the mere fact that the order directing liquidation was entered at a date earlier than the Missouri judgment, has no significance.

On the other hand, the Missouri judgment was a determination of appellant's cause of action against "Chicago Lloyds." That judgment was res judicata of appellant's cause of action. So, if the Missouri court, upon the trial of the appellant's case, had rendered judgment **against** him, instead of in his favor, and if appellant, ignoring that judgment, had filed a claim for the same injury in the liquidation proceeding, there can be no doubt that the Director might have successfully interposed **that** judgment, against the appellant as a bar to a **second** hearing on the same claim (Edwards v. Keller [Tex. Civ. App.], 133 S. W. [2d] 823). By parity of reasoning, the Director is not entitled to demand that the appellant try his cause de novo before the court of the liquidation (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430).

Although it is stated in the statement of the facts contained in the opinion, that "after the order of the Superior Court of Cook County appointing a liquidator was entered, an injunction was issued restraining the claimant (the appellant) and others from prosecuting claims **(of which,"** the Supreme Court added—although the Record contains not a single bit of evidence to sustain that addition—**"claimant concedes he had notice)** * * * " (T. 74), the Supreme Court of Illinois held that the appellant was bound by the injunction, **as a party to the proceeding.** In fact, the appellant was not a party, and was beyond the territorial limits of Illinois, and so not amenable to its process, and actually had **no** notice that an injunction had been entered (T. 52); and the court of the liquidation did not have jurisdiction over him, or power to restrain him from prosecuting the Missouri action (Ewen v. American

Fidelity Co., 261 U. S. 322; The Western Union Tel. Co. v. P. & A. Tel. Co., 49 Ill. 90, 94; Royal League v. Kavenaugh, 233 Ill. 175; Harris v. Pullman, 84 Ill. 20; see Illinois Life Insurance Co. v. Prentiss, 277 Ill. 383, 387).

In Ewen v. American Fidelity Co., 261 U. S. 322, a judgment was obtained against the Illinois Surety Co., the liquidation of whose property was the subject of the litigation in Evans v. Illinois Surety Co., 319 Ill. 105. That judgment was obtained in disregard of the same order, prohibiting the receiver from defending suits in other jurisdictions discussed in the **Evans** case. The Supreme Court of Illinois, in the Evans case, held that the court of the liquidation had exclusive jurisdiction to adjudicate claims, and refused full faith and credit to the judgment in that case. BUT this Court in the Ewen case held that the judgment in that case was valid, saying that the order "imposed no personal obligation on (the plaintiff in the action on the foreign jurisdiction), **as he was not within the jurisdiction of the Illinois Court.**"

The injunction did not purport to enjoin the prosecution of suits already instituted. It restrained the obtaining of "preferences, judgments, attachments or **other like liens,**" and the making of any "levy against Chicago Lloyds, or its property, assets, books or records" (T. 4). In short, it was an injunction to protect the res, not to restrain the adjudication of unsecured claims, in a suit pending at the time it was entered. The Court of the liquidation had no authority, under the Illinois Insurance Code, to restrain the prosecution of pending actions, judgments in which could not become liens against the res (Ill. Rev. Stat., Ch. 73, Par. 801).

Not only did the court of the liquidation lack power to enjoin the appelant from obtaining a non-lien judgment, and jurisdiction over the appellant, but there has been no adjudication that the appellant has violated the injunction (Andrews v. Knox, 70 Ill. 65).

Even if the appellant had violated an injunction, binding upon him, by obtaining a judgment, the judgment would not be void (Platt v. Woodruff, 61 N. Y. 378, 381; Geddes v. Wayne Circuit Judge, 151 Mich. 122, 114 N. W. 874; High on Injunctions [4th ed.], Secs. 46, 103; 28 Am. Jur., "Injunctions," 392; 32 C. J., "Injunctions," 85; and see Boettcher v. Howard Engraving Co., 389 Ill. 75, 79).

Moreover, in point of fact, it was never "conceded" (as stated in the opinion, T. 74) that the appellant had notice or knowledge of the injunction. It was conceded only that he had notice of Liquidator's Exhibit No. 1 (T. 60-61)—the notice to file his claim—in which not one word concerning the **injunction** is contained. At the hearing before the Master in Chancery, counsel for the Director expressly requested that the right to produce evidence, showing that appellant had notice of the injunction, be reserved (T. 24, 52). But at no time did he produce or offer any proof that the appellant had such notice.

VI.

Full Faith and Credit Cannot Be Refused to the Missouri Judgment Upon the Theory That It Gave the Appellant "No Rights."

The Supreme Court of Illinois states that it had held, in Evans v. Illinois Surety Co., 319 Ill. 105, that such a judgment gave the creditor no rights, and that Missouri "has reached substantially the same result" in McDonald v. Pacific State Life Ins. Co., 343 Mo. 132, 124 S. W. (2d) 1157 (T. 76).

We do not so read either case. In the Evans case it is said at page 110 of the report: "If the plaintiff in such an action desired a judgment against the company for some purpose other than the right to share in the assets held by the receiver he might proceed. • • • That judgment bound only the company and not the receiver of its assets."

And at pages 112 and 113 it is said: "So far as McKegney (the judgment creditor) and the surety company (the judgment debtor) are concerned, the judgment is entitled to full faith and credit under the Constitution of the United States, but the constitutional provision has no application to the receiver * * *." Thus, according to that case, although the court of the liquidation is not bound to give effect as against the res to the judgment, either upon principles of comity or under the full faith and credit clause, the judgment debtor is bound by the judgment even though the receiver was not. In Point VII we shall demonstrate that full faith and credit cannot be refused upon the theory that the "constitutional provision has no application to the receiver." Under this point it suffices to say that the Evans case is not authority for the proposition that the Missouri judgment gave the appellant no rights.

The Missouri cases we have cited clearly demonstrate that a judgment creditor has rights by virtue of his judgment. "A judgment is a debt, a property right * * *" (Vitale v. Duerbeck, 338 Mo. 556, 571, 92 S. W. [2d] 691).

An examination of the McDonald v. Insurance Co. case shows that the Supreme Court of Missouri did not decide in McDonald v. Pacific State Life Ins. Co., 343 Mo. 1232, that the judgment in that case gave the judgment creditor no rights. It decided only that a Missouri judgment creditor could not, or did not, have a "right" to levy on part of the res located in Missouri, title to which was vested in the liquidator appointed by the State of incorporation. The language of that case suggests that the judgment creditor did have rights by virtue of his judgment, but that he would not be permitted to enforce them against property which no longer was under the control of the judgment debtor. It certainly was not suggested in that case that the judgment was a nullity.

The Missouri judgment was an adjudication that Chicago Lloyds was indebted to the appellant in the amount

of the judgment. The Missouri Court ordered that a writ of execution issue (T. 35). Can it be doubted that in case Chicago Lloyds was rehabilitated under the provisions of the Illinois Insurance Code, after the order authorizing the Director to take possession was entered, that the judgment could be enforced?

VII.

Full Faith and Credit Cannot Be Refused to the Missouri Judgment on the Theory Stated in Evans v. Illinois Surety Co., 319 Ill. 105, "That the Constitutional Provision Has No Application to the Receiver."

As stated, in Point IV, the **Evans** case decides that, on principles of comity, Illinois would not allow the sister-State judgment creditor to share in the property which was in the possession of the Illinois court of chancery; and that although the sister-State judgment was entitled to full faith and credit **as against the debtor**, "the constitutional provision has no application to the **receiver**, who was not a party to the action nor bound by the judgment." It will be observed that the theory upon which full faith and credit were refused in the **Evans** case, is not advanced in the opinion in **this** case.

Full faith and credit cannot be refused upon the theory "that the constitutional provision has no application to the receiver." The receiver cannot be regarded as a stranger. With respect to a stranger to the judgment, it would be more apt to say that the **judgment** has no application to him or imposes no obligation upon him, rather than to say that the full faith and credit clause has no application to him. But a receiver is generally regarded as the representative of the debtor, especially where he succeeds to the debtor's property for purposes of distributing it among creditors.

Considering the receiver as the representative of the

debtor, he is in privity with the debtor [Riehle v. Margolies, 279 U. S. 218; Freeman on Judgments (1925 ed.), Vol. 1, p. 1079, sec. 501; Black on Judgments (1891 ed.), Vol. 2, sec. 534; Bigelow on Estoppel (1890 ed.), p. 142; 34 Corpus Juris, "Judgments" 1004; Schafer v. Robillard, 370 Ill. 92, 100; Towle v. Quante, 246 Ill. 568, 573; Ferriman v. Gillespie, 250 Ill. 369, 371] and so is bound, on principles of estoppel, by a judgment against the debtor. He is estopped from "re-agitating" questions which have been decided between the creditor and the debtor by a court of competent jurisdiction. [Riehle v. Margolies, 279 U. S. 218, 228; Hatch v. Morosco, 19 F. (2d) 766.

If the receiver is regarded as the representative of the court [High on Receivers (1910 ed.), sec. 2; 53 C. J., "Receivers," p. 143, sec. 144; p. 144, sec. 175; p. 139, sec. 167; p. 349, sec. 564; Wiswall v. Kunz, 173 Ill. 110, 111; Nevitt v. Woodburn, 190 Ill. 283, 289; McNulta v. Lockridge, 137 Ill. 270; Sneeden v. Ind. Com., 366 Ill. 552, 559], he may act only when directed by the court appointing him. He is but a stakeholder, not a party in interest or a litigant. He is the arm of the court, holding the property of the debtor for the court pending the outcome of the litigation.

Where the purpose of the litigation is to distribute the debtor's property among creditors, the receiver, on order of the court appointing him, will do so. The receiver is not a party to the litigation. He is not a party in interest. He is neither a creditor nor the debtor. It becomes the duty of the court to ascertain who are creditors of the debtor to whom distribution shall be made; and, in that connection, it is the duty of the court, as the instrument through which the State acts, to give full faith and credit to a sister-State judgment obtained by a creditor.

The court cannot escape that duty by hiding behind its own receiver—by the mere assertion that the constitutional provision has no application to the receiver, for that is

tantamount to asserting that the constitutional provision has no application to the **court** itself. Such a conclusion would nullify the full faith and credit clause, and also nullify Article VI of the Constitution and the provisions of the Fourteenth Amendment thereto.

It is, of course, possible to distinguish the Evans case upon the superficial ground that there the receiver was appointed by a court of chancery, while here the liquidator is an administrative officer; there the debtor was a corporation, here it is an unincorporated association, and on other grounds as well. None the less, the decision that the full faith and credit clause has no application to the receiver is not sound.

VIII.

Full Faith and Credit Cannot Be Refused to the Missouri Judgment on the Theory That the Proceeding Is Statutory.

The Supreme Court of Illinois (T. 75) contended that full faith and credit ought to be refused to the Missouri judgment, because the liquidation proceeding is conducted in accordance with the provisions of the Illinois **statutes** governing liquidation of insurance companies. Therefore by this contention it is obvious that "there is drawn in question the validity of said statutes * * * on the ground of their being repugnant to the Federal Constitution."

We contend that if the Illinois Insurance Code had expressly provided that full faith and credit should not be given to sister-State judgments adjudicating claims against the debtor, it would have been in direct conflict with said constitutional provisions.

The fact that the liquidation is conducted in accordance with a statute is of itself no sufficient reason for refusing full faith and credit. The legislature of a State cannot

enact a law that full faith and credit shall not be given as required by the Federal Constitution.

Said Illinois Code, however, does not provide expressly that full faith and credit shall not be given to sister-State judgments adjudicating claims. It has been given that meaning by the decision of the Supreme Court of Illinois in this case. The theory of the decision is (T. 77), that section 191 of the Code vests title to all of the assets wherever situated of an unincorporated association having no charter, and not a corporation chartered by the State of Illinois merely because that association (Chicago Lloyds) was licensed to write insurance in Illinois, in the Director; that therefore the court of the liquidation has exclusive jurisdiction over the res and also exclusive jurisdiction to adjudicate claims against the debtor; and that therefore the court of the liquidation is not required to give full faith and credit to the judgments of sister States adjudicating claims against that association.

The decision of the Supreme Court of Illinois fixing the meaning of the Code must be accepted as though such meaning had been specifically expressed in the Code. The meaning given the Code becomes a part of it and is to be read as though in the text of the Code (Knights of Pythias v. Meyer, 265 U. S. 30, 32, 34, 68 L. ed. 885).

The only cases cited in support of the theory, that full faith and credit need not be given because the proceeding is statutory, are those in which the judgment of the sister State in question was a nullity because the debtor was a corporation, and had been dissolved by the state creating it before the judgment was rendered. (Martyne v. American Union Fire Insurance Co. of Philadelphia, 216 N. Y. 183, 110 N. E. 502; Pendleton v. Russell, 144 U. S. 640.) The principle of these cases does not apply to a judgment against a debtor which has not been dissolved. (Willits v. Waite, 25 N. Y. 577, 581; Pringle v. Woolkorth, 90 N. Y. 502; Sigua Iron Co. v. Brown, 85 N. Y. S. 141, 142; Taylor v. Gray, 59 N. J. E. 621, 629-630.)

In Pringle v. Woolworth, 90 N. Y. 502, the court said:

"The case is analogous to that of a suit brought against a debtor for the recovery of a debt, after a general assignment of his property made to a trustee for the benefit of creditors. The contract between the debtor and creditor would still subsist, and could be enforced by suit against the debtor, and a **judgment between the original parties on the contract would necessarily establish the existence and extent of the obligation between them, as well as against a trustee of his estate for the benefit of creditors.** • • • And in this case the judgment against the company, established **as against the receiver** the amount of the debt or claim of the plaintiff upon the policy, **and the receiver had no right to re-agitate questions litigated in the action against the company, or to interpose any defense on the merits which might have been taken in the action in which the judgment was rendered.** The receiver holds the property and estate of the corporation as the officer of the court, for the purpose of distribution under the direction of the court among creditors and stockholders and • • • **the receiver and the other creditors are bound thereby.** If any reason existed to question the judgment against the company, it was the duty of the receiver to have applied to the court rendering it, to re-open the judgment and to be permitted to defend." (Emphasis supplied.)

In Sigua Iron Co. v. Brown, 68 N. Y. S. 141, 142, the court said:

"A corporation continues in esse until it is formally adjudged to have been dissolved, and it may sue and be sued in its name, notwithstanding the appointment of a receiver, and a judgment so obtained is valid and binding both against the corporation **and its receiver** (Gluck and Becker on Receivers, Secs. 3 and 4)." (Emphasis supplied.)

In Taylor v. Gray, 59 N. Y. E. 621, 629-630, the court said:

"It is settled that unless there is something in statute or decretal order tantamount to dissolution, a pending action against a corporation may regularly proceed, notwithstanding an adjudication of insolvency and the appointment of a receiver to wind up its affairs and distribute its assets among creditors and stockholders, and this is true although the action is in the courts of another State than that of the home jurisdiction; and, **under the federal constitution, the judgment in the action will be conclusive upon everyone.**" (Emphasis supplied.)

Furthermore, the rule in Illinois seems to be that a judgment against a dissolved corporation—much less against an undissolved unincorporated association—is not void (Commercial Trust Co. v. Mallers, 242 Ill. 50).

The Code does not, expressly provide that the court of the liquidation shall have exclusive jurisdiction to adjudicate claims against the debtor. The powers of the court of the liquidation are limited—much narrower than those generally exercised by a court of chancery. The Supreme Court of Illinois held in People v. Niehaus, 356 Ill. 104, 109, that the court of the liquidation "acts only within the scope defined by the terms of the statute." It was also held in that case that the court of Liquidation had no power to appoint a liquidator. (The statements in the opinion that the liquidator "was appointed by the court," are erroneous [T. 73 and 74]). The court can only find that sufficient cause for liquidation exists and the Director, an executive officer, not a judicial officer, takes possession. In this case the finding made by the court was that Chicago Lloyds did not have $500,000 surplus, as required by the Illinois law, to continue business in Illinois, but only had $304,187.90 surplus over liabilities (T. 2). It is he who has control over the res. It is difficult to reconcile the decision, that the powers of the court given it by the statute are so limited that it cannot even appoint a liquidator, with the conclusion in this case that,

not only does that court have exclusive jurisdiction over the res, but over the adjudication of claims as well.

The Code not only fails to confer exclusive jurisdiction to adjudicate claims, but expressly provides for the adjudication of certain claims in **other** courts (Ill. Rev. Stat., Ch. 73, Par. 821 (4). In People v. Fort Dearborn Ins. Co., 307 Ill. App. 194, the Appellate Court of Illinois gave effect to a judgment of another court adjudicating a claim and ordering it to be allowed as a claim in the liquidation proceeding.

It has been suggested that insurance companies are excluded from the operation of the National Bankruptcy Act (Tr. 76 and 77). That affords no reason for giving the statute of a State nation-wide operation. The Congress has the power "to establish * * * uniform laws on the subject of bankruptcies throughout the United States" (Constitution, Art. I, Sec. 7). The power of the States, even in the absence of legislation by Congress, is limited to their territorial boundaries. Although Congress may provide that claims against a bankrupt may be liquidated only in courts of bankruptcy, the legislature of a State may not provide that claims against a debtor which have been reduced to judgments in the courts of sister States shall not receive full faith and credit. Nor can one State limit the jurisdiction of the courts of another.

The earlier Bankruptcy Acts did not provide that Courts of Bankruptcy shall have exclusive jurisdiction to liquidate claims against the bankrupt, and so it has been held, under the Bankruptcy Act of 1867, that a judgment of a State court established conclusively in bankruptcy the existence and amount of the debt provable against the Bankrupt estate (Norton v. Switzer, 93 U. S. 355, 363-364 [cited in Riehle v. Margolies at page 226]).

At most, the provisions of the Illinois Code could have the effect of vesting in the Director of Insurance of the State of Illinois title to the property—even the property

located in other States—of a debtor corporation which was created by Illinois. It does not purport to confer exclusive jurisdiction to adjudicate claims against the debtor upon the court of the liquidation; and if it contained a provision purporting to do so, it would be ineffective to oust other courts of their jurisdiction. It does not provide that the court of the liquidation shall not give full faith and credit to sister-State judgments. The Supreme Court of Illinois has read into the provision that title to the property of the debtor shall vest in the Director, the meaning that the court of the liquidation shall have exclusive jurisdiction to adjudicate claims and shall not be required to give full faith and credit to sister-State judgments adjudicating claims against the debtor.

So construed, the Code is in conflict with said full faith and credit clause, and with the Act of Congress, and with the decisions of this Court.

B.

The obligation to guard and force every right secured by the Constitution of the United States rests on the state courts equally with the Federal Courts.

Smith v. O'Grady, 312 U. S. 329, 95 L. E. 859.

C.

The same is true of the Fourteenth Amendment. It, like the original Constitution, as provided by Article VI, is the supreme law of the land, and therefore Illinois could not make or enforce any law which abridged the privileges or immunities of appellant as a citizen of the United States. Furthermore, appellant was deprived of due process of law. He was never served with process in Illinois or in Missouri, never voluntarily entered an appearance or actually received notice of the injunction, yet the Supreme Court of Illinois held that he was bound by the in-

junction which was based upon its interpretation of the scope of Section 189 of the Illinois Insurance Code, and which injunction is set out in the language of the statute.

It would be a work of supererrogation to again argue these points at any length. They have been argued heretofore in Point A. It is obvious that these two constitutional provisions, together with Sections 1 and 2 of Article IV have been violated, in the construction, interpretation and effect given to the Illinois Insurance Code by the courts of Illinois.

CONCLUSION.

A.

In conclusion, it is obvious that "Chicago Lloyds" continued to remain capable to being sued despite the entry of the decree of February 9, 1938, that the director take possession and liquidate their property, and a judgment rendered in Missouri, after the entry of such an order on a suit already pending and at issue, is not void, and is entitled to the protection of Sec. 1 of Art. IV of Constitution.

B.

Chicago Lloyds continued to remain capable of being sued after its certificate of authority (or license) to transact business in Illinois had expired, irrespective of whether it was renewed or not, either in Illinois or in any state where service could be obtained.

C.

The Missouri judgment was valid and binding and was entitled to receive full faith and credit in Illinois.

D.

The fact that the liquidation proceedings in Illinois were statutory, did not confer exclusive jurisdiction upon the Illinois courts to **adjudicate** claims arising in other states and already pending in the form of suits at the time of the liquidation order, where the company is an unincorporated association which has not been dissolved and declared "dead."

E.

The director of insurance of Illinois could not, by operation of law, under any legal interpretation of the Statutes of Illinois, become vested with the title to any property of Chicago Lloyds situated in Missouri. Even if he could, it would not follow as an **incident** of that title, that claims against "Chicago Lloyds" could not be adjudicated in competent courts of Missouri. Under the said Insurance Code no statutory provision is made (or could be made) for the "dissolution" of either a partnership or of any voluntary association of individuals, unincorporated or of "joint adventurers"; said Insurance Code only provides, insofar as the power to dissolve is concerned, that a **corporation** (if it be one formed under the laws of the State of Illinois), may, by inserting a special prayer in the petition of the proceedings, etc., be dissolved (Sec. 196 of said Code).

The general laws and decisions of the courts of last resort of Illinois provide and hold (a) that even the appointment of a receiver for an Illinois corporation, with authority to wind up its affairs, does not work a "dissolution" and abate pending actions against it, and such pending actions may be prosecuted to judgments. Evans v. Ill. Surety Co., 319 Ill. 105, 1. c. 110.

The withdrawal of a partner from a partnership merely terminates, but does not dissolve, the partnership (citing

cases); and even the termination of a partnership does not terminate its existence. It continues to exist until the winding up of the partnership affairs constitutes its dissolution.

We regret that we have been compelled to expatiate to the extent set out under the Argument on full faith and credit, but the effect of the Illinois decision is of the utmost importance throughout the United States, and the decision of this court will have a far-reaching effect upon the constitutional questions herein presented.

Respectfully submitted,

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APPENDIX.

Missouri Statutes Involved (R. S. Mo. 1929).

"**Sec. 728** (R. S. Mo. 1929): **Writs, how served on persons, foreign corporations and voluntary or unincorporated associations or organizations, and how voluntary or unincorporated associations or organizations may be sued.** A summons shall be executed * * * Seventh, where any action shall be commenced against any voluntary or unincorporated association or organization it may be sued in the name it has selected or by which it is known or uses and summons may be served on it by delivering a copy of the writ and petition to the president or other officer, agent or employe, in charge of any office or place of business * * * and when had in conformity herewith shall be deemed personal service against such voluntary or unincorporated association or organization and authorize the rendition of a general judgment against it. * * *"

"**Sec. 729** (R. S. Mo. 1929). **Voluntary or unincorporated association or organization defined.** For all intents and purposes of this article, the term 'voluntary or unincorporated association or organization,' referred to in the seventh subdivision of section 728, shall apply to and be construed to include common law trusts, or associations operating under a declaration of trust."

"**Sec. 864** (R. S. Mo. 1929): **What within two years.** Within two years: An action for libel, slander, assault, battery, false imprisonment or criminal conversation * * * shall be brought within two years from the date of the act of neglect complained of."

"**Sec. 5892** (R. S. Mo. 1929): **Insurance company required to procure certificate before transacting business in state.** No company shall transact in this state any insurance business unless it shall first procure from the

superintendent of the insurance department of this state a certificate stating that the requirements of the insurance laws of this state have been complied with authorizing it to do business; a copy of which certificate, certified by the superintendent, and issued only upon the request of the president or secretary, or other chief officer of the company, or of a general agent of the company for this state, notice of whose appointment has been filed in the department, shall be held by every agent or solicitor for such company doing business * * * Every such company shall be required to procure annually for the use of its agents and solicitors, copies of the renewed certificate of authority provided for by law. * * *"

"**Sec. 5893** (R. S. Mo. 1929): **All companies to conform to this law.** No individual or association of individuals, under any style or name, shall be permitted to do the business mentioned in this chapter within the state of Missouri, unless he or they shall first fully comply with all the provisions of the laws of this state governing the business of insurance * * *"

"**Sec. 5894** (R. S. Mo. 1929): **Process against foreign companies, appointment of superintendent to receive or accept service of.** Any insurance company not incorporated by or organized under the laws of this state, desiring to transact any business by any agent or agents in this state, shall first file with the superintendent of the insurance department a written instrument or power of attorney, duly signed and sealed, appointing and authorizing said superintendent to acknowledge or receive service of process issued from any court of record, justice of the peace, or other inferior court, and upon whom such process may be served for and in behalf of such company, in all proceedings that may be instituted against such company, in any court of this state or in any court of the United States in this state, and consenting that service of

process upon said superintendent shall be taken and held to be as valid as if served upon the company, according to the laws of this or any other state. Service of process as aforesaid, issued by any such court, as aforesaid, upon the superintendent, shall be valid and binding and be deemed personal service upon such company, so long as it shall have any policies or liabilities outstanding in this state, although such company may have withdrawn, been excluded from or ceased to do business in this state. * * *"

Illinois Statutes Involved (R. S. Ill. 1937).

"**Sec. 15** (Chap. 83, Rev. Stat. Ill. 1937): **Personal Injuries, penalties, etc.** Actions for damages for an injury to the person or for false imprisonment, or malicious prosecution, or for a statutory penalty, or for abduction, or for seduction, or for criminal conversation, shall be commenced within two years next after the cause of action accrued."

"**Sec. 87** (Rev. Stats. Ill. 1937): **Certificate of Authority.** It shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State unless it has first obtained and has in force a certificate of authority issued by the Director. All certificates of authority issued under the provisions of this Article shall terminate on the thirtieth day of June next following the date of issuance and may be renewed upon compliance with this Code."

The Illinois statutes, the validity of which is involved herein, are as follows (Chap. 73, Art. XIII, Ill. R. S. 1937):

"Section 187 (Par. 799) '**Scope of Article.**' This article shall apply to every company which is doing or attempting to do, or which is representing that it is doing an insurance business in this State * * *"

"Section 188 (Par. 800) **Grounds for Rehabilitation and Liquidation of Domestic Company.** Whenever any domestic company

(a) is insolvent; or

(b) has refused to submit its books, * * * to the Director of Insurance * * *;

(c) has neglected or refused to observe an order of the Director to make good within the time prescribed by law any deficiency, whenever its capital, if a stock company, or its required surplus, if a company other than stock, shall have become impaired;"

Then follows subsection (d) relating to illegal transfer of its property;

"(e) is found to be in such condition that its further transaction of business would be hazardous to its policyholders, or to its creditors, or to the public; or

(f) has violated its charter or any law of this State or its corporate powers; or

(g) that an officer has refused to be examined under oath touching its affairs;

(h) cannot meet the requirements for organization as required by law;

(i) has ceased to transact insurance business for one year;

(j) has commenced or attempted a voluntary liquidation or dissolution;

(k) is a party plaintiff or defendant in any proceeding for the appointment of a Receiver, custodian, liquidator or rehabilitator for such company;

(l) consents by a majority of its directors, stockholders or members; or

(m) has not organized and obtained a certificate authorizing it to commence the transaction of its business within the period of time prescribed by the sections of this Code, under which it is or proposes to be organized; or

(n) has refused or neglected to pay any valid final judgment in thirty days,

"Then the Director shall report any such case to the Attorney General of this State whose duty it shall be to apply forthwith * * * for an order to rehabilitate or liquidate—and for an order to show cause why an order to rehabilitate or liquidate should not be entered as provided by this article."

"Section 189 (Par. 801) **Injunction.** The court shall have jurisdiction, at any time after the filing of the petition to issue an injunction restraining such company and its officers, agents, directors, employees and all other persons from transacting any company business * * *. The Court may issue such other injunctions or enter such other orders as may be deemed necessary to prevent interference with the proceedings, or with the Director's possession and control or title, rights or interests as herein provided or to prevent interference with the conduct of the business by the Director, and may issue such other injunctions or enter such other orders as may be deemed necessary to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens or the making of any levy against such company or its property and assets while in the possession and control of the Director."

"Section 190 (Par. 802) **Order of Rehabilitation or Liquidation.** On the return of such order to show cause and after a full hearing, which shall be held by the court without delay, the court shall enter an order either dismissing the petition or finding that sufficient cause exists

for rehabilitation or liquidation and directing the Director to take possession of the property, business and affairs of such company and to rehabilitate or liquidate the same as the case may be. * * *"

"Section 191 (Par. 803) **Title to Property of Company.** The Director and his successor and successors in office shall be vested by operation of law with the title to all property, contracts and rights of action of the company as of the date of the order directing rehabilitation or liquidation. The filing or recording of such order in the office of the Recorder of Deeds or the Registrar of Titles in any county of this State shall impart the same notice that a deed, bill of sale or other evidence of title duly filed for record by such company would have imparted."

"Section 193 (Par. 805) **Duties of Director as Liquidator—Sales—Notice to Creditors—Reinsurance.**" This section contains four subdivisions, the first providing "that upon the entry of an order directing liquidation the Director shall immediately proceed to liquidate the property, business and affairs of the company"; the second providing that "He may, subject to the approval of the Court, sell or otherwise dispose of the real and personal property * * *"; the third providing that "He shall as soon as may be conveniently possible, give notice to all creditors who may have claims against the company, as revealed by the records of the company, to present the same"; the fourth providing for reinsurance of policy risks.

"Section 194 (Par. 806) **Rights and Liabilities of Creditors Fixed Upon Liquidation.** The rights and liabilities of the company and of its creditors, except those holding contingent claims, and of its policyholders, stockholders or members and of all other persons interested in its assets shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing

liquidation. The rights of claimants holding contingent claims on said date shall be determined as hereinafter provided."

"Section 196 (Par. 808) **Order of Dissolution.** If the company against whom the petition for liquidation is filed be a corporation and the petition prays for dissolution of such company, the court shall have jurisdiction either before or after final liquidation of the property, business and affairs of such company, after service of an order to show cause as aforesaid and a full hearing, to enter a decree dissolving such company. The Court may likewise, regardless of whether an order of liquidation is sought or has been obtained, upon proper petition by the Director, order dissolution of a company where it has failed to qualify for a certificate of authority authorizing it to commence the transaction of its business, or where a company has no assets and no means for payment of liabilities."

"Section 208 (Par. 820) **Time to File Claims Against Insolvent Company.** (1) If upon the entry of an order directing the liquidation of a domestic company, or at any time thereafter during such liquidation proceeding, such company shall not be solvent, the Court shall after such notice and hearing, as it deems proper, make an order declaring such company to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the Director shall notify all persons who may have claims against such company, as revealed by the records of the company, and who have not filed proper proofs thereof, to present the same to him at a place specified in such notice within such time as may be fixed by order of the court. The last day for filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court. The Director shall also cause a notice specifying the last day for the filing of claims to be published once each week for three

successive weeks in a newspaper published in the county where such proceedings are pending, and in such other newspapers as he may deem advisable.

"(2) Proofs of claim on good cause shown may be filed subsequent to the date specified, but, no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full."

ARTICLE V. **Lloyds.**

Sec. 86 (Par. 698). **Scope of Article.** (1) This article shall apply to all individuals and aggregations of individuals transacting an insurance business in this state through an attorney-in-fact under the name of Lloyds or under a Lloyds plan of operation. Such individuals and aggregation of individuals are referred to in this Code as "Lloyds".

(2) As used in this Code "Domestic Lloyds" means a Lloyds having its home office in this State; "Foreign Lloyds" means a Lloyds having its home office in any State of the United States; and "Alien Lloyds" means a Lloyds having its home office or principal place of business in any country other than the United States.

Sec. 89 (Par. 701). **Principal Office of Attorney-in-Fact.** The principal office of the attorney-in-fact of a domestic Lloyds shall be maintained in this State.

Sec. 91 (Par. 703). **Declaration of Domestic Lloyds.** It provides that the attorney-in-fact for underwriters who desire to form a domestic Lloyds, under this Article, shall sign and acknowledge a declaration in duplicate, and set forth the name of the attorney-in-fact, the location of the office of the attorney-in-fact, the names and addresses of the individual underwriters, the class or classes of insur-

ance which said Lloyds proposed to transact, and "such other provisions not inconsistent with law which may be deemed by the attorney-in-fact or the underwriters to be necessary or advisable."

Sec. 92 (Par. 704). **Documents to Be Delivered to Director.** It provides that upon the execution of the declaration by the attorney-in-fact for a domestic Lloyds, there shall be delivered to the director duplicate originals of the declaration, a copy of the power of attorney-in-fact, an instrument authorizing the service of process on the director, provided for in Section 630 of this Chapter, and all the forms of insurance policies or contracts proposed to be used.

Sec. 94 (Par. 706). **Approval of Documents.** This section provides that the documents and papers so delivered to the Director may be approved or disapproved by the Director, and that if they are approved by the Director the Director shall place them on file in his office and shall endorse upon a duplicate original his approval, with the month and day and year of such approval, and deliver it to the attorney-in-fact.

Sec. 96 (Par. 708). **Issuance of Certificate of Authority.** This section provides that when the Director has been notified that the underwriters have deposited a sum not less than the minimum admitted assets required by Section 711, he shall conduct an examination of such Lloyds, and if he finds that the organization has been completed and all other requirements of this Code have been met, he shall issue to such Lloyds a certificate of authority to transact the kind or kinds of business specified in the declaration.

Sec. 99 (Par. 711). **Minimum Admitted Assets Required of Domestic Lloyds.** This section provides that each domestic Lloyds shall at all times keep and maintain in this

State admitted assets including the deposits of underwriters required by Section 709 of this Chapter, and that if such Chicago Lloyds is writing all or any kind of insurance enumerated in either Class 2 or Class 3 of Section 616 of this Chapter, it must maintain a surplus of not less than $500,000.

Sec. 101 (Par. 713). **Restrictions Upon Domestic Lloyds.** It provides that a domestic Lloyds shall not change its name, establish branches, amend or change its declaration, without the approval of the Director, and that it shall maintain the assets required by this Article in cash or in investments permitted by this Code. Shall maintain in this State a principal office of its attorney-in-fact, and notify the Director of any change in underwriters, and notify the Director of any change of attorney-in-fact.

Sec. 102 (Par. 714). **Restrictions Upon Foreign Lloyds.** This section provides that each foreign Lloyds authorized to transact business in this State shall maintain cash and securities, including the deposits required by this Article for domestic Lloyds, doing the same kind of business, shall file with the Director an authenticated copy of its power-of-attorney and an authenticated copy of the trust agreement or other agreement under which deposits made by underwriters are held. Notify the Director forthwith of any amendment to its power-of-attorney, or change in its name or change of attorney-in-fact, or of the address of the attorney-in-fact; also file with the Director a list of the names and addresses of all the underwriters, the description of the cash and securities deposited in trust by each underwriter.

Sec. 103 (Par. 715). **Alien Lloyds.** This section provides that each Alien Lloyds authorized to transact business in this State shall maintain in this state or in any state of the

United States, in which they are authorized to transact business, cash or securities of a character comparable to the requirements of Section 737 of this Chapter, required by this Article for domestic Lloyds doing the same kind of business. Make deposits of underwriters in this State in accordance with the requirements imposed upon domestic Lloyds, file with the Director an authenticated copy of the power-of-attorney and copy of the trust agreement under which deposits made by the underwriters are held. Notify the Director forthwith of amendments to its power-of-attorney and of any change in the name or change of attorney-in-fact; and file a verified statement setting forth the names and addresses of all underwriters of such Lloyds and a description of the cash and securities deposited in trust by each underwriter.

Sec. 197 (Par. 809). **Grounds for Conservation of Assets of Foreign or Alien Company.** It provides that whenever any of the grounds for rehabilitation or liquidation of domestic companies, specified in Clauses A, B, C, D, E, F, G, J, K and N of Sec. 800 of this Chapter, arise or exist with reference to any foreign or alien company, authorized to transact the business of insurance in this State, and having assets in this State, the Director may proceed for the filing of a petition as provided in this Article against domestic companies, for an order directing such foreign or alien company to show cause why the Director should not take possession of its assets in this State and conserve said assets for the benefit of its creditors and the interests of its policyholders, creditors, members, stockholders or the public may require. And by said section it is provided that the court shall have jurisdiction to issue injunctions and to issue such other orders as it may deem necessary, as is provided in the case of a petition against a domestic company so far as such injunctions or orders may apply to such foreign or alien company; and if the court finds that

sufficient cause for conservation exists, it shall direct the Director to take possession of the property, business and affairs of the company and to conserve the same; and that upon the entry of such order, the Director shall forthwith take possession of the property, business and affairs of such foreign or alien company, and conserve the same; and he shall retain such possession until, on the petition either of the Director by the Attorney General, or of such foreign or alien company, or its receiver or any one in charge of the property, business and affairs of such foreign or alien company, in its domiciliary state or country, the court, after a full hearing, shall find that the ground for such order finding cause for conservation has been removed.